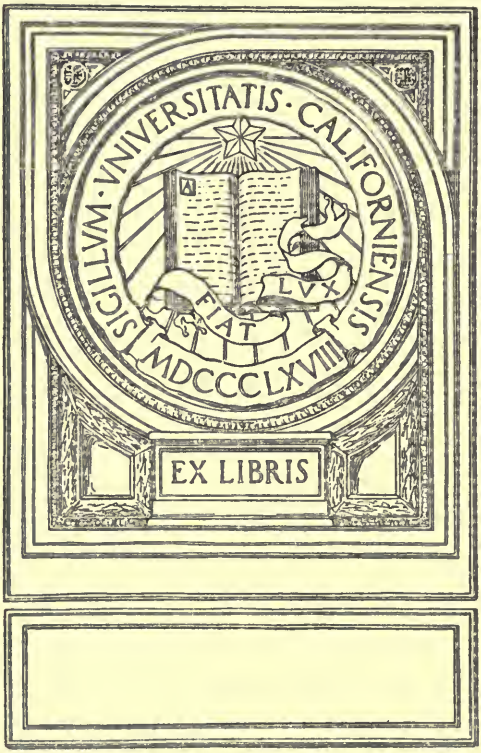
HISTORY
OF THE
CONSTITUTIONS
OF
IOWA.

SHAMBAUGH.

UNIVERSITY OF CALIFORNIA
AT LOS ANGELES



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HISTORY

OF THE

CONSTITUTIONS OF IOWA

BY

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THE UNIVERSITY OF IOWA

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TO HIS FRIEND

CHARLES ALDRICH

FOUNDER AND CURATOR OF

THE HISTORICAL DEPARTMENT OF IOWA

THIS VOLUME IS GRATEFULLY DEDICATED

BY THE AUTHOR

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PREFACE

To recur occasionally to the history and ideals of our pioneer forefathers will give us a more generous appreciation of the worth of our Commonwealth and a firmer faith in our own provincial character. It is believed that a more intimate knowledge of the political history of our own Commonwealth will not only inspire local patriotism, but give us a better perspective of the political life of the Nation.

This little volume was written for publication by the Historical Department of Iowa upon the request of Mr. Charles Aldrich. Since the work is intended as a narrative essay, it has been thought best to omit all foot-note citations to authori-

ties. For the original sources upon which the essay is largely based the reader is referred to the author's collections of documentary materials which have been published by the Iowa State Historical Society. Quotations used in the body of the text have been reprinted *literatim* without editing.

The Convention of 1857 and the Constitution of 1857 have been little more than noticed in chapters XIX and XX. An adequate discussion of these subjects would have transcended the limits set for this volume by several hundred pages.

The author wishes to express his obligations to his friend and colleague, Professor W. C. Wilcox, of the University of Iowa, who has carefully read the proof-sheets of the whole volume.

BENJ. F. SHAMBAUGH.

UNIVERSITY OF IOWA
JULY, 1902

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AN HISTORICAL ESSAY

I

INTRODUCTION

THREE score years and ten after the declaration went forth from Independence Hall that "all men are created equal," and fifteen years before the great struggle that was to test whether a nation dedicated to that proposition can long endure, Iowa, "the only free child of the Missouri Compromise," was admitted into the Union on an equal footing with the original States.

Profoundly significant in our political evolution are events such as these. They are milestones in the progressive history of American Democracy.

To search out the origin, to note the progress, to point to the causes, and to declare the results of this marvelous popular political development in the New World has been the ambition of our historians. Nay more, the "American experiment" has interested the talent of Europe; and our political literature is already enriched by De Tocqueville's "*Democracy in America*," by von Holst's "*Constitutional and Political History of the United States*," and by Bryce's "*American Commonwealth.*" Ever since its adoption the Constitution of the "Fathers" has been the most popular text-book of constitution drafters the world over.

At the same time it is strangely true that the real meaning, the philosophical import, of this interesting political drama

has scarcely anywhere been more than suggested. A closer view reveals the fact that all of the documents themselves have not yet been edited, nor the narrative fully told. At present there is not a chapter of our history that is wholly written, though the manuscript is worn with erasures.

To be sure, Bancroft has written exhaustively of the Colonies; Fiske has illuminated the Revolution and portrayed the "Critical Period;" Frothingham has narrated the "Rise of the Republic;" Parkman has vividly pictured events in the Northwest; McMaster has depicted the life of the people; von Holst has emphasized the importance of slavery; Rhodes has outlined more recent events; and a host of others have added paragraphs, chapters, monographs, and volumes to the fascinating story of the

birth and development of a Democratic Nation. But where are the classics of our local history? Who are the historians of the Commonwealths?

These questions reveal great gaps in our historical literature on the side of the Commonwealths. Nor have the omissions passed unnoticed. Bryce likens the history of the Commonwealths to "a primeval forest, where the vegetation is rank and through which scarcely a trail has been cut." And yet it is clearly evident that before the real import of American Democracy can be divined the forest must be explored and the underbrush cleared away.

This is not a plea for localism or particularism. On the contrary, it suggests the possibility of a broader view of our National life. It points to the source of

our political ideals. For nothing is more misleading than the inference that the life of our people is summed up in the Census Reports, the Journals of Congress, and the Archives of the Departments at Washington.

The real life of the American Nation spreads throughout forty-five Commonwealths. It is lived in the commonplaces of the shop, the factory, the office, the mine, and the farm. Through the Commonwealths the spirit of the Nation is expressed. Every American community, however humble, participates in the formation and expression of that spirit.

Thus the real significance of the Commonwealth in any philosophical consideration depends not so much upon its own peculiar local color as upon the place which

it occupies in the life and development of the larger National whole.

It is so with Iowa. Here within the memory of men still living a new Commonwealth has grown to maturity, has been admitted into the Union, and now by common consent occupies a commanding position in National Politics. It is, moreover, from the view-point of these larger relations that the political and constitutional history of Iowa will ultimately be interpreted. No amount of interest in merely local incident or narration of personal episode will suffice to indicate the import of Iowa's political existence. He who essays to write the history of this Commonwealth must ascend to loftier heights.

To narrate briefly the history of the Constitutions of Iowa, and therein to suggest,

perhaps, somewhat of the political ideals of the people and the place which this Commonwealth occupies politically in the progressive history of the larger Commonwealth of America, is the purpose of these pages.

II

A DEFINITION

Definition is always difficult; it may be tiresome. But when a term has come to have many different meanings, then no one who seriously desires to be understood can use it in the title of a text without at least attempting a definition. This is true of the word "Constitution," which in the literature of Political Science alone has at least three distinct meanings corresponding to the three points of view, that is, the philosophical, the historical, and the legal.

From the view-point of Political Philosophy the word "Constitution," stands for the fundamental principles of government.

It is the sum (1) of the general and basic principles of all political organization by which the form, competence, and limitations of governmental authorities are fixed and determined, and (2) of the general and basic principles of liberty, in accordance with which the rights of men living in a social state are ascertained and guaranteed. In short, it is the sum of the ultimate principles of government.

But from the view-point of Historical Politics this word has a different connotation. Consider, for example, the political literature that appears under such headlines as "Constitutional History" or the "History of Constitutional Government." Here Constitution means not abstract philosophic principles of Government, but concrete political phenomena, that is, political

facts. Our constitutional historians do not as a rule deal directly with the ultimate principles of government; but they are concerned rather with their progressive phenomenal manifestations in the assembly, the court, the office, the caucus, the convention, the platform, the election, and the like. Thus Constitutional History is simply a record of concrete political facts.

It is, however, in the literature of Jurisprudence that the term "Constitution" is used in accordance with an exact definition. Constitutional Law, or the Law of the Constitution, means a very definite thing to the Jurist. It stands (at least in America) for a written instrument which is looked upon "as the absolute rule of action and decision for all departments and officers of government.....and in opposition to

which any act or regulation of any such department or officer, or even of the people themselves, will be altogether void." In this sense a Constitution is a code of that which is fundamental in the Law. To be sure, this code or text, as everybody knows, does not provide for all that is fundamental in government. It usually contains much that is temporary and unimportant. But to the American Jurist all that finds expression in the written document labeled "Constitution" is Constitutional Law. Accordingly, he defines the Constitution as the written or codified body of fundamental law in accordance with which government is instituted and administered.

It is as a code or text of fundamental law that the word "Constitution" is used

in the title of these pages. This is not a philosophical discussion of the ultimate principles of our government, nor an outline of our constitutional history, but simply a narrative touching the written texts or codes that have served the people of Iowa as fundamental law during the past sixty years.

III

THE CONSTITUTION MAKERS

Constitutions are not made; they grow. This thought has become a commonplace in current political literature. And yet the growth of which men speak with such assurance is directed, that is, determined by the ideals of the people. Members of constituent assemblies and constitutional conventions neither manufacture nor grow Constitutions—they simply formulate current political morality. It is in the social mind back of the convention, back of the government, and back of the Law that the ideals of human right and justice are conceived, born, and evolved. A Constitution

is a social product. It is the embodiment of popular ideals.

And so the real makers of the Constitutions of Iowa were not the men who first in 1844, then in 1846, and then again in 1857 assembled in the Old Stone Capitol on the banks of the Iowa River. The true "Fathers" were the people who, in those early times from 1830 to 1860, took possession of the fields and forests and founded a new Commonwealth. They were the pioneers, the frontiersmen, the squatters — the pathfinders in our political history. Aye, they were the real makers of our fundamental law.

The first of the Iowa pioneers crossed the Mississippi in the early thirties. They were preceded by the bold explorer and the intrepid fur-trader, who in their day

dared much, endured much, and through the wildernesses lighted the way for a westward-moving civilization. Scarcely had their camp-fires gone out when the pioneer appeared with ax and ox and plow. He came to cultivate the soil and establish a home—he came to stay.

The rapidity with which the pioneer population of Iowa increased after the Black-Hawk war was phenomenal. It grew literally by leaps and bounds. Men came in from all parts of the Union—from the North-west, from the East, from the South, and from the South-east. They came from Maine and Massachusetts, from New York and Pennsylvania, from Virginia and the Carolinas, from Georgia, Kentucky and Tennessee, and from the newer States of Ohio and Indiana. It is

said that whole neighborhoods came over from Illinois.

In 1835 Lieutenant Albert Lea thought that the population had reached at least sixteen thousand souls. But the census reports give a more modest number—ten thousand five hundred. When the Territory of Iowa was established in 1838 there were within its limits twenty-two thousand eight hundred and fifty-nine people. Eight years later, when the Commonwealth was admitted into the Union, this number had increased to one hundred and two thousand three hundred and eighty-eight.

Thus in less than a score of years the pioneers had founded a new Empire west of the Mississippi. And such an Empire! A land of inexhaustible fertility! A hundred thousand pioneers with energy,

courage, and perseverance scarcely less exhaustible than the soil they cultivated!

In the location of a home the pioneer was usually discriminating. His was not a chance "squatting" here or there on the prairie or among the trees. The necessities —water and fuel—led him as a rule to settle near a stream or river, and never far from timber. The pioneers settled in groups. One, two, three, or more families constituted the original nucleus of such groups. The groups were known as "communities" or "neighborhoods." They were the original social and political units out of the integration of which the Commonwealth was later formed.

But the vital facts touching the pioneers of Iowa are not of migration and settlement. In political and constitutional evolu-

tion the emphasis rests rather upon the facts of character. What the pioneers were is vastly more important than where they came from, or when and where and how they settled; for all law and government rests upon the character of the people, Constitutions being simply the formulated expressions of political Ethics. It is in this broad catholic sense that the ideals of pioneer character became the determining factors in Iowa's political evolution and the pioneers themselves the real makers of our fundamental law.

Two opinions have been expressed respecting the early settlers of Iowa. Calhoun stated on the floor of Congress that he had been informed that "the Iowa country had been seized upon by a lawless body of armed men." Clay had

received information of the same nature. And about the same time Senator Ewing (from Ohio) declared that he would not object to giving each rascal who crossed the Mississippi one thousand dollars in order to get rid of him.

Nor was the view expressed by these statesmen uncommon in that day. It was entertained by a very considerable number of men throughout the East and South, who looked upon the pioneers in general as renegades and vagabonds forming a "lawless rabble" on the outskirts of civilization. To them the first settlers were "lawless intruders" on the public domain, "land robbers," "fugitives from justice," and "idle and profligate characters." Squatters, they held, were those "who had gone beyond the settlement and were wholly reckless of

the laws either of God or man." Nay more, they were "non-consumers of the country, performing no duties either civil or military." In short, gentlemen who had never even visited the Iowa frontier talked glibly about frontier lawlessness, anarchy, and crime.

Such wholesale defamation when applied to the early settlers of Iowa ought not to be dismissed with a shrug. The men who made these harsh charges were doubtless honest and sincere. But were they mistaken? All testimony based upon direct personal observation is overwhelmingly against the opinions they expressed.

Lieutenant Albert Lea who had spent several years in the Iowa District writes in 1836 that "the character of this population is such as is rarely to be found in our newly

acquired territories. With very few exceptions there is not a more orderly, industrious, active, painstaking population, west of the Alleghanies, than is this of the Iowa District. Those who have used the name 'squatters' with the idea of idleness and recklessness, would be quite surprised to see the systematic manner in which everything is here conducted. . . . . It is a matter of surprise that about the Mining Region there should be so little of the recklessness that is usual in that sort of life."

In 1838 Peter H. Engle, writing from Dubuque, says: "The people are all squatters; but he who supposes that settlers . . . . who are now building upon, fencing and cultivating the lands of the government are lawless depredators, devoid of the sense of moral honesty, or that they are not in every

sense as estimable citizens, with as much intelligence, regard for law and social order, for public justice and private rights.... as the farmers and yeomen of New York and Pennsylvania, ... has been led astray by vague and unfounded notions, or by positively false information."

The statements of Lea and Engle fairly represent the views of those who from actual personal contact were familiar with the life and character of the pioneers.

We may then rest assured that the squatters of Iowa were as a class neither idle, nor ignorant, nor vicious. They were representative pioneers of their day, than whom, Benton declared, "there was not a better population on the face of the earth." They were of the best blood and ranked as the best sons of the whole country. They

were young, strong, and energetic men—hardy, courageous, and adventurous. Caring little for the dangers of the frontier, they extended civilization and reclaimed for the industry of the world vast prairies and forests and deserts. They made roads, built bridges and mills, cleared the forests, broke the prairies, erected houses and barns, and defended the settled country against hostile Indians. They were distinguished especially for their general intelligence, their hospitality, their independence and bold enterprise. They had schools and schoolhouses, erected churches, and observed the sabbath.

A law abiding people, the pioneers made laws and obeyed them. They were loyal American citizens and strongly attached to the National government.

The pioneers were religious, but not ecclesiastical. They lived in the open and looked upon the relations of man to nature with an open mind. To be sure their thoughts were more on "getting along" in this world than upon the "immortal crown" of the Puritan. And yet in the silent forest, in the broad prairie, in the deep blue sky, in the sentinels of the night, in the sunshine and in the storm, in the rosy dawn, in the golden sunset, and in the daily trials and battles of frontier life, they too must have seen and felt the Infinite.

Nor is it a matter of surprise that the pioneers of Iowa possessed the elements of character above attributed to them. In the first place, only strong and independent souls ventured to the frontier. A weaker class could not have hoped to endure the

toils, the labors, the pains, and withal the loneliness of pioneer life; for the hardest and at the same time the most significant battles of the 19th century were fought with axes and plows in the winning of the West. The frontier called for men with large capacity for adaptation—men with flexible and dynamic natures. Especially did it require men who could break with the past, forget traditions, and easily discard inherited political and social ideas. The key to the character of the pioneer is the law of the adaptation of life to environment. The pioneers of Iowa were what they were largely because the conditions of frontier life made them such. They were sincere because their environment called for an honest attitude. Having left the comforts of their old homes, traveled hun-

dreds and thousands of miles, entered the wilderness, and endured the privations of the frontier, they were serious-minded. They came for a purpose and, therefore, were always *about*, doing something. Even to this day, their ideals of thrift and "push" and frugality pervade the Commonwealth.

And so the strong external factors of the West brought into American civilization elements distinctively American — liberal ideas and democratic ideals. The broad rich prairies of Iowa and Illinois seem to have broadened men's views and fertilized their ideas. Said Stephen A. Douglas: "I found my mind liberalized and my opinions enlarged when I got out on these broad prairies, with only the heavens to bound my vision, instead of having them

circumscribed by the narrow ridges that surrounded the valley [in Vermont] where I was born."

Speaking to an Iowa audience, Governor Kirkwood once said: "We are rearing the typical Americans, the Western Yankee if you choose to call him so, the man of grit, the man of nerve, the man of broad and liberal views, the man of tolerance of opinion, the man of energy, the man who will some day dominate this empire of ours." How prophetic!

Nowhere did the West exert a more marked influence than in the domain of Politics. It freed men from traditions. It gave them a new and a more progressive view of political life. Henceforth they turned with impatience from historical arguments and legal theories to a philos-

ophy of expediency. Government, they concluded, was after all a relative affair.

"Claim Rights" were more important to the pioneer of Iowa than "States Rights." The Nation was endeared to him; and he freely gave his first allegiance to the government that sold him land for $1.25 an acre. He was always *for the Union*, so that in after years men said of the Commonwealth he founded: "Her affections, like the rivers of her borders, flow to an inseparable Union."

But above all the frontier was a great leveler. The conditions of life there were such as to make men plain, common, unpretentious—genuine. The frontier fostered the sympathetic attitude. It made men really democratic and in matters political led to the three-fold ideal of Equality

which constitutes the essence of American Democracy in the 19th century, namely:

Equality before the Law,

Equality in the Law,

Equality in making the Law.

The pioneer of the West may not have originated these ideals. The first, Equality before the Law, is claimed emphatically as the contribution of the Puritan. But the vitalizing of these ideals—this came from the frontier, as the great contribution of the pioneer.

IV

SQUATTER CONSTITUTIONS

It may seem strange to class the customs of the pioneers among the early laws of Iowa. But to refer to the "Resolutions" and "By-Laws" of the squatters as political Constitutions is more than strange; it is unorthodox. At the same time History teaches that in the evolution of political institutions, customs precede statutes; written laws follow unwritten conventions; the legal is the outgrowth of the extra-legal; and constitutional government is developed out of extra-constitutional government. One need not search the records of antiquity nor decipher the mon-

uments for illustrations of these truths; for in the early political history of Iowa there is a recurrence of the process of institutional evolution including the stage of customary law. Here in our own annals one may read plainly writ the extra-legal origin of laws and constitutional government.

Absence of legislative statutes and administrative ordinances on the frontier did not mean anarchy and disorder. The early settlers of Iowa were literally, and in that good old Anglo-Saxon sense, "lawful men of the neighborhood," who from the beginning observed the usages and customs of the community. Well and truly did they observe the customs relative to the making and holding of claims. And as occasion demanded they codified these customs and

usages into "Constitutions," "Resolutions," and "By-Laws." Crude, fragmentary, and extra-legal as were their codes, they nevertheless stand as the first written Constitutions in the history of the Commonwealth. They were the fundamental laws of the pioneers, or, better still, they were Squatter Constitutions.

The Squatter Constitutions of Iowa, since they were a distinctive product of frontier life, are understood and their significance appreciated only when interpreted through the conditions of Western life and character.

It was through cession and purchase that the United States came into possession of the vast public domain of which the fertile farming fields of Iowa formed a part. Title to the land vested absolutely in the

Government of the United States. But the right of the Indians to occupy the country was not disputed. Until such right had been extinguished by formal agreement, entered into between the United States and the Indians, no white citizen was competent to make legal settlement therein.

As early as 1785 Congress provided that no settlement should be made on any part of the public domain until the Indian title thereto had been extinguished and the land surveyed. Again, in 1807, Congress provided: "That if any person or persons shall, after the passing of this act, take possession of, or make a settlement on any lands ceded or secured to the United States by any treaty made with a foreign nation, or by a cession of any State to the United States,

which lands shall not have been previously sold, ceded, or leased by the United States, or the claim to which lands, by such person or persons, shall not have been previously recognized and confirmed by the United States; or if any person or persons shall cause such lands to be thus occupied, taken possession of, or settled; or shall survey, or attempt to survey, or cause to be surveyed, any such lands; or designate any boundaries thereon, by marking trees, or otherwise, until thereto duly authorized by law; such offender or offenders shall forfeit all his or their right, title, and claim, if any he hath, or they have, of whatsoever nature or kind the same shall or may be to the lands aforesaid, which he or they shall have taken possession of, or settled, or caused to be occupied, taken

possession of, or settled, or which he or they shall have surveyed, or attempt to survey, or the boundaries thereof he or they shall have designated, or cause to be designated, by marking trees or otherwise. And it shall moreover be lawful for the President of the United States to direct the marshal, or the officer acting as marshal, in the manner hereinafter directed, and also to take such other measures, and to employ such military force as he may judge necessary and proper, to remove from land ceded, or secured to the United States, by treaty, or cession, as aforesaid, any person or persons who shall hereafter take possession of the same, or make, or attempt to make a settlement thereon, until thereunto authorized by law. And every right, title, or claim forfeited under this

act shall be taken and deemed to be vested in the United States, without any other or further proceedings."

In March, 1833, the act of 1807 was revived with special reference to the Iowa country to which the Indian title was, in accordance with the Black-Hawk treaty of 1832, to be extinguished in June. It was made "lawful for the President of the United States to direct the Indian agents at Prairie du Chien and Rock Island, or either of them, when offenses against the said act shall be committed on lands recently acquired by treaty from the Sac and Fox Indians, to execute and perform all the duties required by the said act to be performed by the marshals in such mode as to give full effect to the said act, in and over the lands acquired as aforesaid."

Thus it is plain that the early settlers of Iowa had no legal right to advance beyond the surveyed country, mark off claims, and occupy and cultivate lands which had not been surveyed and to which the United States had not issued a warrant, patent, or certificate of purchase.

But the pioneers on their way to the trans-Mississippi prairies did not pause to read the United States Statutes at Large. They outran the public surveyors. They ignored the act of 1807. And it is doubtful if they ever heard of the act of March 2, 1833. Some were bold enough to cross the Mississippi and put in crops even before the Indian title had expired; some squatted on unsurveyed lands; and others, late comers, settled on surveyed territory. The Government made some successful

effort to keep them off Indian soil. But whenever and wherever the Indian title had been extinguished, there the hardy pioneers of Iowa pressed forward determining for themselves and in their own way the bounds and limits of the frontier.

Hundreds and thousands of claims were thus located! Hundreds and thousands of farms were thus formed! Hundreds and thousands of homesteads were thus established! Hundreds and thousands of improvements were thus begun! Hundreds and thousands of settlers from all parts of the Union thus "squatted" on the National commons! All without the least vestige of legal right or title! In 1836, when the surveys were first begun, over 10,000 of these squatters had settled in the Iowa country. It was not until 1838 that the

first of the public land sales were held at Dubuque and Burlington.

These marginal or frontier settlers (squatters, as they were called) were beyond the pale of constitutional government. No statute of Congress protected them in their rights to the claims they had staked out and the improvements they had made. In *law* they were trespassers; in *fact* they were honest farmers.

Now, it was to meet the peculiar conditions of frontier life, and especially to secure themselves in what they were pleased to call their rights in making and holding claims, that the pioneers of Iowa established land clubs or claim associations. Nearly every community in early Iowa had its local club or association. It is impossible to give definite figures, but

it is safe to say that over one hundred of these extra-legal organizations existed in Territorial Iowa. Some, like the Claim Club of Fort Dodge, were organized and flourished after the Commonwealth had been admitted into the Union.

In the "Recollections" and "Reminiscences" of pioneers many references are made to these early land clubs or claim associations, and Constitutions, By-laws, or Resolutions are sometimes reproduced therewith in whole or in part. But *complete and adequate manuscript records* of but two Iowa organizations have thus far come to light. The "Constitution and Records of the Claim Association of Johnson County," preserved by the Iowa State Historical Society, were published in full in 1894.

The materials of this now famous manuscript, which are clear and complete, were arranged as follows: I. Constitution and Laws; II. Minutes of Meetings; III. Recorded Claims; IV. Recorded Quit Claim Deeds.

The Constitution of the Johnson County Association is perhaps the most elaborate Squatter Constitution in the annals of early Iowa. It was adopted March 9th, 1839, and consists of three articles, twenty-three sections, and over twenty-five hundred words.

Article I. fixes the name of the Association, and declares that "the officers of this association shall be one President, one Vice President, One Clerk or Recorder of claims, deeds or transfers of Claims, seven Judges or adjusters of claims or boundrys....and two Marshalls." All of the officers were elected annually.

Article II. relates to "sallerys." It provides that "the Clerk or Recorder shall receive Twenty-five cents for recording each and everry claim, and fifty cents for everry deed or conveyance....and Twelve & a half cents for the privalege of examining his Books." The Judges and Marshals were allowed one dollar and fifty cents each for every day spent in the discharge of the duties of their respective offices.

Article III. contains ten sections bearing upon a variety of subjects. Section 1 indicates in detail how claims are to be made and recorded and the boundaries thereof designated. No person was allowed to hold more than four hundred and eighty acres. Section 2 provides that "any white male person over the age of eighteen can become a member of this association by signing

the laws rules and regulations governing the association," that "actual citizens of the County over the age of seventeen who are acting for themselves and dependent on their own exertions, and labour, for a lively hood, and whose parents doe not reside within the limits of the Territory can become members of this association and entitled to all the privalages of members," but that "no member of the association shall have the privalege of voting on a question to change any article of the constitution or laws of the association unless he is a resident citizen of the county and a claimholder, nor shall any member be entitled to vote for officers of this association unless they are claim holders."

The same section provides that "any law or article of the constitution of this

association may be altered at the semianual meetings and at no other meetings provided, however, that three fifths of the members presant who are resident citizens of the county and actual claim holders shall be in favour of such change or amendment, *except that section fixing the quantity of land that everry member is entitled to hold by claim and that section shall remain unaltered.*"

By the same article semi-annual meetings of the Association are provided for in section 3. Section 5 declares that "all persons who have resided within the limits of the County for Two months, shall be recognized and considered as citizens of the County." Another section stipulates that "members of the association who are not citizens of the County shall be required in

making claims to expend in improvements on each claim he or they may have made or may make the amount of fifty Dollars within six months of the date of making such claim or claims and fifty Dollars every six months there after until such person or persons becomes citizens of the county or forfeit the same." The 10th section relates to the procedure of the Claim Court. Finally, in section 11 the members pledge their "honours" for the "faithful observance and mantanance" of the Constitution by subscribing their names to the written document.

In addition to the Constitution, Resolutions were, from time to time, adopted with the force of laws. It is here that the real spirit and purpose of the pioneer squatters is best expressed. With characteristic

frankness they resolved to "discountenance any attempts on the part of any and every person to intrude in any way upon the rightful claims of another," since "the presumption is that a person thus attempting to take away a portion of the hard earnings of the enterprising and industrious setler is dishonest & no Gentlemen."

That they insisted upon equity rather than upon refined technicalities in the administration of their law is seen in the following: "Resolved that to avoid difficulty growing out of the circumstance of persons extending their improvements accidentaly on the claims of others before the Lines were run thereby giving the first setlr an opportunity or advantage of Preemption over the rightful owner that any person who hold such advantages shall

immediately relinquish all claim thereto to the proper owner and any one refusing so to do shall forfeit all claim to the right of protection of the association."

For the speculator who sometimes attended the land sales the squatters had little respect; so they "Resolved that for the purpose of garding our rights against the speculator we hereby pledge ourselves to stand by each other and to remain on the ground until all sales are over if it becomes necessary in order that each and every setler may be secured in the claim or claims to which he is justly entitled by the Laws of this association." And remarkable as it may seem, the same protection which was pledged "before the sale" was guaranteed to "all such members as may be unable to enter their claims at the sale

after such sale and until the same may be entered by them."

The following are typical records of claims as recorded in the claim book of the Johnson County Association:

"The following is a decription of my claim made about the 15 of January 1838, that I wish recorded. Situated on Rapid Creek About Two Miles above Felkners & Myers mill Johnson County Iowa Territory Commencing about 20 Rods South of Rapid Creek at a double white Oak Tree Blazed & 3 notches on one side and 4 on the other and then running West three fourths of a mile to a double white Oak on the east side of a small branch Blazed and marked as before described then running North about three fourths of a mile to a white Oak tree Blazed and marked as before then running

East about three fourths of a mile to a small Bur Oak tree on the west side of Rapid Creek marked and blazed as before mentioned then running South crossing Rapid Creek to the place of beginning March 20th 1839. GRIFFITH SHRECK"

"The following claim I purchased of John Kight in February 1839, & I wish it registered to me as a claim made as I have not got his deed with me the same being the S W qr of S 14, & that part of the S ½ of S 15, that Lyes East of the Iowa River —T 79 N. R. 6 W. July 3rd 1840 handed in July 3, 1840 ROBERT LUCAS"

An illustrative quitclaim deed from the same records reads as follows:

"This bargen made and entered into by the following parties Viz this day I James Williams has bargened and sold to Philo

Costly a certain claim lying on the E side of Rapid Creek boundrys of said claim as follows commencing at a white Oak tree standing about 80 Rods below the upper forks of Rapid Creek thence running south ½ mile thence E 1 mile to a stake standing on the Prairie near 2 Trees. thence N ½ mile to a stake thence W. 1 mile to the starting place—I the said Williams agree and bind myself to defend all rights & claims excepting the claim of the general Government and also singular all rights claims & Interests to said claim for and in concideration of the sum of one hundred Dollars the receipt thereof I here in acknowledge said Williams agrees to put up a House and finish Except putting up the Chimney & dobing and also said Williams is to Haul

out Eight or Ten hundred rails all included for the receipt above mentioned.

Receipt. Johnson County. I. T. January 25, 1841

JAMES WILLIAMS [SEAL]

Witness

CORNELIUS HENYAN

Handed in Februrary 3rd 1841 "

The manuscript records of the Claim Club of Fort Dodge, discovered several years ago among the papers of Governor Carpenter, are now carefully preserved by the Historical Department at Des Moines. From these records it appears that the first meeting of the Claim Club of Fort Dodge was held on the 22d day of July, 1854. At this meeting a committee was chosen to

draft a "code of laws," and the following motions were passed:

"First. That 320 Acres shall constitute a claim.

2d. A claim may be held one month by sticking stakes and after that 10 dollars monthly improvements is necessary in order to hold a claim. Also that a cabin 16 x 16 feet shingled and enclosed so as to live in is valued at $30.00."

Of the same date are the following By-laws or Resolutions:

"Whereas the land in this vicinity is not in market and may not be soon, We, the undersigned claimants deem it necessary in order to secure our lands to form ourselves into a Club for the purpose of assisting each other in holding claims, do, hereby form and adopt the following byelaws:

Resolved 1st. That every person that is an Actual claimant is entitled to hold 320 Acres of land until such time as it comes into market.

Resolved 2d. That any person who lives on their claim or is continually improving the same is an actual Claimant.

Resolved 3d. That stakeing out a claim and entering the same on our Claim Book shall hold for one month.

Resolved 4th. That $10, Monthly shall hold a claim thereafter.

Resolved 5th. That no mans claim is valid unless he is an actual settler here, or, has a family and has gone after them, in which case he can have one month to go and back.

Resolved 6th. That any person not living up to the requirements of these laws

shall forfeit their claim, and, any Actual Settler who has no claim may settle on the same.

Resolved 7th. That any person going on anothers claim that is valid, shall be visited by a Com. of 3 from our club and informed of the facts & and if such person persist in their pursuits regardless of the Com or claimant they shall be put off the Claim by this Club.

Resolved 8th. That the boundaries of these laws shall be 12 miles each way from this place.

Resolved 9th. That this club shall hold its meetings at least once in each month.

Resolved 10th. That the officers of this club shall consist of a Chairman & Secty.

Resolved 11th. That the duty of the Chairman is to call to order, put all ques-

tions, give the casting vote when there is a tie, &c. &c.

Resolved 12th. That the duty of the sec. is to keep the minutes of the meetings and read the same at the opening of each meeting and have the book and papers in his charge.

Resolved 13th. That any or all of the bye laws may be altered or abolished by a majority vote at a regular meeting."

On the offense of "claim-jumping" the records of the Fort Dodge Club contain this suggestive entry: "On Motion of Wm. R. Miller that if any member of this Club finds his or any of his friends Clames has been Jumpt that they inform this Club of the fact and that this Club forthwith put them off of said clame without trobling the Sivel Law."

In the *Iowa News* of March 28, 1838, was printed "The Constitution of the Citizens of the North Fork of the Maquoketa, made and adopted this 17th day of February, A. D. 1838." It is a typical Squatter Constitution of the Territorial period.

"Whereas, conflicting claims have arisen between some of the settlers residing upon Government Lands, and whereas many individuals have much larger claims than are necessary for common farming purposes, Therefore, we, the subscribers, to preserve order, peace and harmony, deem it expedient to form an association, and adopt some certain rules, by which those difficulties may be settled, and others prevented. Therefore, we do covenant, and agree to adopt and support the following articles.

Art. 1. This association shall be called the North Fork of Maquoketa Association, for the mutual protection of settlers' claims on Government Lands.

Art. 2. That there shall be elected by the subscribers, a President, whose duty it shall be to call meetings to order, and preside as Chairman, and to receive complaint and to appoint a Committee of three from the Great Committee, to settle all difficulties that arise from conflicting claims, and also to fill vacancies.

Art. 3. There shall be a Vice President elected, whose duty it shall be to fill the office of President in his absence.

Art. 4. There shall be chosen a Secretary, whose duty it shall be to keep a correct Journal of the acts and proceedings of each and every meeting, and register all

claims in a book kept by him for that purpose, who shall receive the sum of 25 cents for the registering of each and every claim.

Art. 5. There shall be elected a committee of nine men, to be called the Grand Committee.

Art. 6. No settler shall be entitled to hold more than three quarter sections of land. Each settler shall give in the numbers of the quarter sections that he may claim. Each and every settler shall make an improvement on his, her, or their claim, sufficient to show that the same is claimed, previous to having the same recorded.

Art. 7. All minors under sixteen shall not be considered as holding claims, either by themselves, parents, or otherwise.

Art. 8. The Secretary, at the request of eight subscribers, shall call a meeting of

the settlers, by advertising the same in three different places, not less than ten days previous to the meeting.

Art. 9. No person shall have any attention paid to his, her, or their complaint until they first subscribe to this Constitution.

Art. 10. All committees that shall sit or act under this constitution, shall determine in their decision and declare which party shall pay the costs, and each declaration shall be binding and be collected according to the laws of this Territory.

Art. 11. When complaints shall be made to the President, he shall immediately notify the sitting committee of three to meet at some convenient place. Then if said committee be satisfied that the opposing party has been timely notified,

shall then proceed to investigate and try the case in dispute, receive evidence, and give their decision according to justice and equity, which decision shall be final: Provided, always, That either party considering injustice has been done, shall have a right to appeal to the Grand Committee, together with the President, who shall investigate the same, and shall give their decision in writing, from which there shall be no appeal. All appeals shall be made within ten days, or forever excluded.

Art. 12. There shall be held an annual meeting on the 1st Monday of November for the election of officers and committees.

Art. 13. The fees of each committee man with the President, shall not exceed one dollar per day.

Art. 14. This constitution may be

altered and amended by a vote of two thirds of the members.

Art. 15. All committees made under this constitution shall be the judges of its meaning and spirit, and the resolutions of its meeting shall be governed according to their decisions.

Art. 16. All persons not settlers, having claims not settled before the 1st of May, 1838, shall be forfeited."

A hundred pages could easily be devoted to this interesting phase of our political history, but the details already given will suffice to indicate the nature, scope, and purpose of the Squatter Constitutions of Iowa. Their influence is clearly seen in a fourfold direction.

First, they made it possible and prac-

ticable for the settlers to go upon the public domain (surveyed or unsurveyed) and establish homes without the immediate inconvenience of paying for the land.

Secondly, they secured to the bona fide settlers the right to make improvements on the public lands and to dispose of the same for a reasonable consideration, or to purchase their improved land from the Government at the minimum price of $1.25 an acre.

Thirdly, they afforded bona fide settlers adequate protection in the peaceable possession and enjoyment of their homes without fear of being molested or ousted, either by the Government, or the newcomer, or the land speculator, until the land was offered for sale, or opened for entry, or until they were able to enter or purchase the same for themselves and their families.

Fourthly, they fostered natural Justice, Equality, and Democracy on the frontier (*a*) by establishing order under a Government founded upon the wishes of the people and in harmony with the peculiar conditions, social and economic, of the community, (*b*) by giving security alike to all bona fide settlers, (*c*) by limiting the amount of land any one settler could rightfully hold, (*d*) by requiring all disputes to be settled in regularly constituted courts, and (*e*) by conducting all public affairs in and through mass meetings, with the full knowledge and consent of all the people.

In their Constitutions and Resolutions the squatters suggested, and in a measure definitely determined, the manner of disposing of the public lands. The principles of the most important legislation of Con-

gress relative to the public domain came from the frontier. A comparison of the customs of the squatters with the provisions of the pre-emption and homestead acts reveals the truth that the latter are largely compilations of the former. These American principles of agrarian polity are products of frontier experience.

One is even justified in suggesting that herein we have, perhaps, come across the origin of the American principle of homestead exemptions. Is it not reasonable to suggest that the emphasis which frontier life and customs placed upon the importance and value of the homestead gave birth to the laws that are "based upon the idea that as a matter of public policy for the promotion of the property of the State and to render independent and above want each

citizen of the Government, it is proper he should have a home—a homestead—where his family may be sheltered and live beyond the reach of financial misfortune?"

The Squatter Constitutions stand for the beginnings of local political institutions in Iowa. They were the fundamental law of the first governments of the pioneers. They were the fullest embodiment of the theory of "Squatter Sovereignty." They were, indeed, fountains of that spirit of Western Democracy which permeated the social and political life of America during the 19th century. But above all they expressed and, in places and under conditions where temptations to recklessness and lawlessness were greatest, they effectively upheld the foremost civilizing principle of Anglo-Saxon polity—the Rule of Law.

V

THE TERRITORY OF WISCONSIN

The year one thousand eight hundred and thirty-six is memorable in the constitutional annals of Iowa, since it marks the beginning of the Territorial epoch and the advent of our first general code or text of fundamental law.

To be sure, the Iowa country had had a certain constitutional status ever since the acquisition of the Province of Louisiana in 1803. In 1804, it formed a part of the District of Louisiana, which was placed under the jurisdiction of the Governor and Judges of the Territory of Indiana; in 1805, it remained a part of that district

known henceforth as the Territory of Louisiana; in 1812, it was included within the newly created Territory of Missouri; in 1821, it was reserved for freedom by the Missouri Compromise; and finally, after being without a local constitutional status for more than thirteen years, it was "attached to, and made a part of, the territory of Michigan" for "the purpose of temporary government." Nevertheless, it would be sheer antiquarianism to catalogue the treaty and conventions of 1803 and the several acts of Congress establishing the District of Louisiana, the Territory of Louisiana, the Territory of Missouri, and the Territory of Michigan as Constitutions of Iowa.

Furthermore, a Constitution is the fundamental law of a *people*, not of a *geograph-*

ical area: and since the Iowa country was practically uninhabited prior to 1830, the earlier Territorial governments, which have been mentioned, had for Iowa only a nominal political significance. This is not to deny that Iowa has a history prior to 1830: it simply points out that this earlier history is largely a record of changes in subordinate jurisdiction over a geographical area, and in no sense the annals of a political society.

Even after the permanent settlement of the Iowa country in the early thirties and its union with the Territory of Michigan in 1834, constitutional government west of the Mississippi continued to be more nominal than real. This is true notwithstanding the fact that the archives of the Territory of Michigan show that the Governor

and the Legislative Council made a serious attempt to provide for and put into operation local constitutional government. In his message of September 1, 1834, addressed to the Legislative Council, Governor Mason referred to the inhabitants as "an intelligent, industrious and enterprising people," who, being "without the limits of any regularly organized government, ... depend alone upon their own virtue, intelligence and good sense as a guaranty of their mutual and individual rights and interests." He suggested and urged "the immediate organization for them of one or two counties with one or more townships in each county."

The suggestions of the Governor were referred to the committee on the Judiciary, and incorporated into "An Act to lay

off and organize counties west of the Mississippi River." This act, which was approved September 6th, to go into effect October 1st, organized the Iowa country to which the Indian title had been extinguished in June, 1833, into the counties of Dubuque and Demoine. It also provided that each county should constitute a township, and that the first election for township officers should take place on the first Monday of November, 1834. The laws operative in the county of Iowa, and not locally inapplicable, were to have full force in the country west of the Mississippi.

Furthermore, the archives show that the offices of the newly created counties were duly filled by the Governor of the Territory of Michigan "by and with the consent of the Legislative Council." Letters

and petitions addressed to the Governor are evidence that the people did not hesitate to recommend candidates or ask for removals. In Dubuque County they forced the resignation of the Chief Justice of the County Court and secured the appointment of a candidate of their own choice. And when a vacancy occurred in the office of Sheriff, the inhabitants of the same County, thinking that "the best method of recommending a suitable person for that office was to elect one at their annual township meeting," voted for Mr. David Gillilan as their choice. The Clerk of the County Court, who was authorized to notify the Governor of the results of the election, expressed the "hope that a commission will be prepared and sent as early as practicable." The records show that Mr. Gillilan was

subsequently appointed by the Governor. So much for the public archives of the Territory of Michigan respecting the political status of the Iowa country.

In a memorial to Congress drawn up and adopted by a delegate convention of of the people west of the Mississippi assembled at Burlington in November, 1837, this statement is made in reference to the two years from 1834 to 1836: "During the whole of this time the whole country, ... sufficient of itself for a respectable State, was included in the counties Dubuque and Demoine. In each of these two counties there were holden, during the said term of two years, two terms of a county court, ... as the only source of judicial relief up to the passage of the act of Congress creating the Territory of Wisconsin."

The Legislative Council of the Michigan Territory, in a memorial which bears the date of March 1, 1836, went on record to this effect: "According to the decision of our Federal Court, the population west of the Mississippi are not within its jurisdiction, a decision which is presumed to be in accordance with the delegated power of the court and the acknowledged laws of the land; but that ten or twelve thousand freemen, citizens of the United States, living in its territory, should be unprotected in their lives and property, by its courts of civil and criminal jurisdiction, is an anomaly unparalleled in the annals of republican legislation. The immediate attention of Congress to this subject is of vital importance to the people west of the Mississippi."

On the floor of Congress, Mr. Patton of

Virginia "adverted to the peculiar situation of the inhabitants of that Territory [the Territory which was soon afterwards organized as Wisconsin] they being without government and without laws." This was in April, 1836. On the same day Mr. George W. Jones, the delegate from Michigan, declared that the people of western Wisconsin "are now, and have ever been, without the pale of judicial tribunals." He "stated that he did not know of a single set of the laws of the United States within the bounds of the contemplated Territory."

The position of the Iowa country for several months immediately preceding the organization of the Territory of Wisconsin was indeed peculiar. In the eastern part of what had been the Territory of Michigan

the people had framed and adopted a State Constitution. As early as October, 1835, they elected State officers. But on account of a dispute with Ohio over boundary lines, Congress was in no hurry to recognize the new State. Then for a time there were two governments—the Government of the State of Michigan and the Government of the Territory of Michigan—each claiming to be the only rightful and legitimate authority. It was not until January, 1837, that the existence of Michigan as a State was recognized at Washington.

Lieutenant Albert M. Lea, a United States army officer, who had spent some time in the country west of the Mississippi did not fail to observe the anomalous condition of the people. Writing early in 1836, he said: "It is a matter of some

doubt, in fact, whether there be any law at all among these people; but this question will soon be put to rest by the organization of the Territory of Wisconsin within which the Iowa District is by law included."

But a general conclusion concerning the actual political status of the Iowa country prior to the organization of the Territory of Wisconsin is no longer doubtful when to these documentary evidences are added the sweeping testimony of the early squatters who declare that the only government and laws they knew or cared anything about in those days were the organization and rules of the claim club. It is substantially correct to say, (1) that the Territorial epoch in our history dates from the fourth day of July, 1836, when Wisconsin was constituted "a separate Territory," for the purposes

of temporary government, and (2) that our first code or text of fundamental law, that is to say, the first Constitution of Iowa was "An Act establishing the Territorial Government of Wisconsin."

As regards this conclusion two criticisms are anticipated. First, it will be said that since the Territory of Iowa was organized in 1838, the Territorial epoch in our history could not have begun in 1836. Secondly, it will be said that an act of Congress providing for and establishing a Territory is not a Constitution.

The answer to the first criticism lies in the fact that the Iowa country was not an outlying district attached to the Territory of Wisconsin, but really formed a constituent part thereof. The area of Wisconsin Territory west of the Mississippi was far

more extensive than the area of the same Territory east of the river. In population the two areas were nearly equal; but the west tended to increase more rapidly than the east. The importance of the west is further evidenced by the removal of the Capital after the first session of the Legislative Assembly from Belmont in eastern Wisconsin to Burlington in western Wisconsin. The constitutional history of Wisconsin up to the division of the Territory in 1838 is, therefore, clearly a part of the Territorial history of Iowa. The assignment of the old name "Wisconsin" to the country east of the Mississippi and of the new name "Iowa" to the country west of that river in 1838, when the Territory of Wisconsin was divided, did *not give rise* to Territorial government among our people.

The act of Congress of June 12, 1838, provided for the division of an existing Territory and the *continuation* of Territorial government in the western part thereof under the name Iowa.

When, however, all this is conceded, the propriety of referring to the Organic Act of a Territory as a Constitution is questioned. It is true that the act establishing the Territorial government of Wisconsin was not drawn up by the people of the Territory. It was not even submitted to them for ratification. Handed down to them by Congress, in the form of an ordinary statute, it was a pure product of legislation. It did not even have the label "Constitution," or "Fundamental Compact," or "Organic Law." Nevertheless, this instrument was a veritable Constitu-

tion, since it was a written body of fundamental law in accordance with which the government of the Territory was instituted and administered. It was supreme, serving as the absolute rule of action for all departments and officers of the Territorial government. The courts always took this view of the Organic Act, and refused to enforce acts which were clearly in opposition to its provisions.

VI

THE TERRITORY OF IOWA

In the year 1836 there was printed and published at Philadelphia a small book bearing on its title-page these words:

NOTES
ON
WISCONSIN TERRITORY,
WITH A MAP.

BY
LIEUTENANT ALBERT M. LEA,
UNITED STATES DRAGOONS.

PHILADELPHIA.
HENRY S. TANNER—SHAKESPEAR BUILDING.
1836.

The significance of this little volume lies in the fact that through it the country destined to give birth to "the only free

child of the Missouri Compromise" was christened IOWA. Lieutenant Lea was familiar with the country described in his "Notes." He had traveled through it, had seen its beautiful prairies, had met its inhabitants face to face, and had enjoyed their frontier hospitality. He must have been deeply impressed by the Iowa river and its name. Referring to the country west of the Mississippi river he says: "The District under review has been often called 'Scott's Purchase,' and it is sometimes called the 'Black-Hawk Purchase'; but from the extent and beauty of the Iowa river which runs centrally through the District, and gives character to most of it, the name of that stream, being both euphonous and appropriate, has been given to the District itself."

The Iowa District was likely to become a separate Territory at an early day, since all indications pointed in the direction of a division of the Territory of Wisconsin. First, the geographical area of the Territory as designated in the Organic Act was sufficient for three or four ordinary Commonwealths. Secondly, this area did not possess geographical unity. Thirdly, historical traditions and considerations favored the establishment of a separate Territory east of the Mississippi, which at the proper time should be admitted as the fifth State born of the Ordinance of 1787 within the limits of the old Territory of the Northwest. Fourthly, the population of the Territory, which was increasing with unparalleled rapidity, was so widley scattered as to make it practically impossible

to give equal force to the laws and equal efficiency to the administration of government in all of the frontier communities. That the "Father of Waters" should serve as the natural line of division was generally conceded.

Scarcely had the act organizing the Territory of Wisconsin gone into effect, when the agitation for division was launched. By the fall of 1837 it had captured the public mind. The burden of the movement was taken up with enthusiasm by the inhabitants of the Iowa District. They realized that the proposition to remove the seat of the Territorial government from Burlington to some point east of the Mississippi was likely to rob them of much political influence and some distinction. They felt that a Territorial government

located somewhere "in the vicinity of the Four Lakes" could not successfully administer constitutional government in the Iowa District.

The people of Des Moines county were among the first to take formal action on what may well be called the first vital question in the history of the Constitutions of Iowa. At a meeting held in the town of Burlington on Saturday, September 16, 1837, they resolved "That while we have the utmost confidence in the ability, integrity and patriotism of those who control the destinies of our present Territorial Government, and of our delegate in the Congress of the U. States, we do, nevertheless, look to a division of the Territory, and the organization of a separate Territorial Government, by Congress, west of

the Mississippi river, as the only means of immediately and fully securing to the citizens thereof, the benefits and immunities of a government of laws.'' In another resolution they ''respectfully and earnestly recommend to the people of the Territory west of the Mississippi river, immediately to hold county meetings in their respective counties, and appoint three delegates from each county, to meet in Convention at this place, on the first Monday in November next.''

Pursuant to this call of the people of the county of Des Moines for an Iowa District convention, delegates from seven organized counties west of the Mississippi met at the Capitol in Burlington on Monday, November 6, 1837, and organized themselves into a ''Territorial Conven-

tion." As such they continued in session for three successive days. On the second day a resolution was adopted inviting the Governor, members of the Legislative Council, Judges, and members of the bar of Burlington "to take seats within the bar." Committees were then appointed to prepare memorials on the several subjects before the delegates for consideration. On the third day three separate memorials to Congress were unanimously adopted. These related to (1) pre-emptions, (2) the northern boundary line of Missouri, and (3) the division of the Territory.

In the memorial relative to the proposed division of the Territory, it was represented, "That the citizens of that part of the Territory west of the Mississippi River, taking into consideration their remote and isolated

position, and the vast extent of country included within the limits of the present Territory, and the utter impracticability of the same being governed as an entire whole, by the wisest and best administration of our municipal affairs, in such manner as to fully secure individual right and the rights of property, as well as to maintain domestic tranquillity, and the good order of society, have by their respective Representatives, convened in general convention as aforesaid, for the purpose of availing themselves of their right of petition as free citizens, by representing their situation and wishes to your honorable body, and asking for the organization of a separate Territorial Government over that part of the Territory west of the Mississippi River.

"Without, in the least, designing to question the official conduct of those in whose hands the fate of our infant Territory has been confided, and in whose patriotism and wisdom we have the utmost confidence, your memorialists cannot refrain from the frank expression of their belief that, taking into consideration the geographical extent of her country, in connection with the probable population of western Wisconsin, perhaps no Territory of the United States has been so much neglected by the parent Government, so illy protected in the political and individual rights of her citizens.... It will appear that we have existed as a portion of an organized Terri- for sixteen months, with but one term of court. Your memoralists look upon those evils as growing exclusively out of the

immense extent of country included within the present boundaries of the Territory, and express their conviction and belief, that nothing would so effectually remedy the evil as the organization of Western Wisconsin into a separate territorial Govment. To this your memorialists conceive themselves entitled by principles of moral right, by the sacred obligation that rests upon the present government to protect them in the free enjoyment of their rights, until such time as they shall be permitted to provide protection for themselves; as well as from the uniform practice and policy of the Government in relation to her other Territories ..... Your memorialists therefore pray for the organization of a separate territorial government over that part of the Territory of Wisconsin west of the Mississippi river."

The time and place of the meeting of this remarkable "Territorial Convention" were certainly most opportune. Meeting in the halls of the Legislative Assembly at the Capital of the Territory and in the very presence of the members of the Assembly, the delegates declared it to be the wish and will of the people that the Territory be divided. The members of the Assembly were impressed with the fact that the people west of the Mississippi were in earnest, and, as representatives of the whole Territory, they too drew up a memorial which was approved by the Governor within three weeks after the Convention had adjourned.

In this memorial the Legislative Assembly stated the case as follows: "That owing to the great extent of country em-

braced in the limits of Wisconsin Territory, and that vast extent of Territory being separated by a natural division, (the Mississippi river,) which renders the application of the same laws oppressive or unequal to one section or the other; the true policy of the two sections of the Territory being as widely different as their locations; and the impracticability of the officers of the General Government to administer the laws; render it highly important in the opinion of your memorialists that that portion of the Territory lying west of the Mississippi river be formed into a separate Territorial Government.

"The Territory of Wisconsin now contains fifty thousand inhabitants; one-half of which, at least, reside on the west side of the Mississippi river.

"Without any intention of censuring the official conduct of the officers in whose hands the administration of our infant Territory has been intrusted.... your memorialists would respectfully represent, that the western portion of Wisconsin, with a population of twenty-five thousand souls, reaps but a small portion of the benefits and advantages of the fostering care and protection of the mother Government.

"Your memorialists would further represent, that the population of Wisconsin is increasing with a rapidity unparalleled in the history of the settlement of our country; that, by a division of the Territory, and the formation of a separate Territorial Government west of the Mississippi river, your honorable body would greatly advance the political and individual interests of her citizens."

By January 1, 1838, the people had expressed their views. They had formulated their convictions into a definite request which called for immediate division of the Territory. The scene of debate and discussion now shifts from the prairies to the halls of Congress. Here on February 6, 1838, the Committee on the Territories, to whom had been referred the memorials of the Territorial Convention and Legislative Assembly along with petitions from sundry citizens, and who by a resolution of December 14, 1837, had been instructed "to inquire into the expediency of establishing a separate Territorial Government for that section of the present Territory of Wisconsin which lies west of the Mississippi river and north of the State of Missouri," reported a bill to divide the

Territory of Wisconsin, and establish the Territorial government of Iowa.

In the report which accompanied this bill the Committee stated that they had become "satisfied that the present Territory of Wisconsin is altogether too large and unwieldy for the perfect and prompt administration of justice or for the convenient administration of the civil government thereof." They were more specific in saying that "the judges of the Territory, as it now is, and also the Governor, district attorney, and marshal, are entirely unable to perform their respective duties in all parts of the Territory." They also pointed out that of the fifty thousand inhabitants in the Territory more than half resided west of the Mississippi river, that the population was rapidly increasing, that the

natural line of division was the Mississippi river, that the Capital would soon be removed to eastern Wisconsin, and that "so much of the Territory of Wisconsin as is east of the Mississippi river must necessarily form one State."

It was not, however, until early in the month of June that "An act to divide the Territory of Wisconsin and to establish the Territorial Government of Iowa" passed both the Senate and the House of Representatives. On June 12, 1838, it received the approval of President Van Buren. As the Constitution of the Territory of Iowa it took effect on the sixty-second anniversary of the Independence of the American Nation. In the chronology of our Constitutions it stands as the second code or text of fundamental law.

But the Territory of Iowa was not established without opposition in Congress. The discussion in the House of Representatives on the fifth and sixth days of June, and immediately preceding the passage of the act dividing the Territory of Wisconsin, brought out something of the broader significance of the proposition to create a new Territory in the country west of the Mississippi and north of the State of Missouri. From the records it appears that the sympathies of the Representatives were not all with the men on the frontier.

Mr. Mason of Ohio, who moved to strike out the enacting clause, said that he desired to obtain information relative to the assertion "that the people had settled there in a manner contrary to law."

"Mr. Waddy Thompson opposed the

bill and the creation of a Territorial Government in the Northwest.'' He went at great length into ''a consideration of the balance of power between the Northern and Western, and Southern States, as far as related to the questions of slavery, and the annexation of Texas.'' He declared that ''he would never consent to the coming in of these Territories or States into the Union, when the fanatical spirit of the North was pouring into the House memorials against the annexation of Texas, simply because it was cursed with the peculiar institution of the South.'' To preserve the balance of power between the two sections of the Union, was the substance of Mr. Thompson's plea. If by the creation of the Territory of Iowa the North is promised a new State, the demand of

the South for the annexation of Texas should, in accordance with the principle of the balance of power, be recognized. Thus it was proposed to meet the problem of admitting States at the time of the formation of new Territories.

In the course of the debate it was suggested by Mr. Mercer "that Iowa be organized as a Territory when Wisconsin was admitted as a State."

It remained for Mr. Shepard of North Carolina to make emphatic objections all along the line. He opened his speech by intimating that the bill had been introduced to the end that "a fresh rich field might be opened to those who speculate in public lands, and a batch of new offices created for such as seek Executive favor." He had no sympathy with the squatters.

"Who are these that.... pray for the establishment of a new Territory? Individuals who have left their own homes and seized on the public land.... These men pounced on the choicest spots, cut down the timber, built houses, and cultivated the soil as if it were their own property. .... Without the authority of law and in defiance of the Government, they have taken possession of what belongs to the whole nation, and appropriated to a private use that which was intended for the public welfare. These are they who require a governor and council, judges, and marshals, when every act of their lives is contrary to justice, and every petition which they make is an evidence of their guilt and violence. We, who are insulted, whose authority is trampled under foot, are asked

for new favors and privileges; the guardians of the law are approached by its open contemners, and begged to erect these modest gentlemen into a dignified Government.... I cannot sanction their conduct; if they would not move peaceably, they should go at the point of the bayonet; if they forget what is due to their country and their distant fellow-citizens, they ought to be punished. The majesty of the laws should be vindicated."

The Representative from North Carolina was jealous of the growth and development of the West, and he objected to the liberal land policy of the United States since it encouraged the young men to leave their southern homes. He declared that "if the Territory of Iowa be now established, it will soon become a State; and if we now

cross the Mississippi, under the beautiful patronage of this Government, the cupidity and enterprise of our people will carry the system still further, and ere long the Rocky Mountains will be scaled, and the valley of the Columbia be embraced in our domain. This then is the time to pause..

"If happiness depended entirely on the number of hogs raised, or the quantity of corn gathered, then the citizens should be dispersed, so as to occupy the most fertile spots in our whole territory....

"But whatever may be the effect of this land policy on the general welfare, it has been deeply injurious to the Southern portion of the Confederacy....If all of the people born in North Carolina had remained in its limits, our swamps and low grounds would have rivalled the valley of

the Nile in production, and our pine barrens would have been flourishing with the vine, the olive, and the mulberry. We have, therefore, reason to complain of the policy of this Government.... Others may act as pleases them, but I will never sustain a policy so detrimental to the people with whom I am connected.... If these remarks be unavailing, the patriot should fear for the permanence of the Republic."

The spirited debate, which took place in the House of Representatives, on the question of the establishment of the Territorial government of Iowa disclosed the fact that the creation of a new Territory at this time west of the Mississippi and north of Missouri was of more than local interest; it was, indeed, an event in the larger history

of America. Some few men were beginning to realize that the rapid settlement of the Iowa country was not an isolated provincial episode but the surface manifestation of a current that was of National depth. Far-sighted statesmen whose eyes were neither blinded by the lights of the moment nor yet always riveted upon that which for the time was most brilliant, saw that a plain, common-looking pioneer farmer from across the Mississippi had come upon the stage of National Politics and had already begun to play a role in the great drama of American Democracy. But even the prophets did not so much as dream that, within the memory of men then living, the awkward amateur would take the part of a leading actor in the play.

VII

THE CONSTITUTION OF THE TERRITORY

The Territorial epoch in our history began in 1836, when the Territory of Wisconsin was established; it came to a close in 1846, when the State of Iowa was organized and admitted into the Union. Two Constitutions belong to this decade—the Organic Act of the Territory of Wisconsin, and the Organic Act of the Territory of Iowa. These Constitutions are very much alike both in form and content. Indeed, the latter was copied from or modeled upon the former. An outline of either would fairly indicate the content of the fundamental law for the whole Territorial epoch.

But to avoid unnecessary repetition on the one hand and confusion on the other, the title of the present chapter will be taken to mean the Organic Act of 1838.

The Constitution of the Territory of Iowa is clearly an outgrowth of American political development. In its provisions is summed up the final product of that most interesting series of evolutionistic transformations in Territorial government that took place throughout the North and West.

The first in the long line of American Territorial Constitutions, and the starting point of subsequent development, was the ordinance of the Congress of the Confederation now familiarly known as "The Ordinance of 1787." Nor was this famous ordinance itself a code of *new* political

principles. Consciously or unconsciously its framers drew largely from the principles, forms, and practices of American government prior to the Revolution. The analogy between the Colonial and Territorial governments of America is too striking to be dismissed as accidental. The relation of the United States to the Territories has always been of a Colonial character. In the history of Territorial government the Ordinance of 1787 stands as the Magna Charta of the West. But the Great Ordinance like the Great Charter was in many respects crude, incomplete, and un-American. Place it by the side of the Constitution of the Territory of Iowa, and it is plain to see that in the course of fifty years marked changes had taken place — especially in the direction of democratization.

The Constitution of the Territory is a written instrument of twenty sections or articles, containing in all about four thousand words. It has no preamble, but is simply introduced by the enacting clause. As a pure product of Congressional legislation it was promulgated upon the legislative authority of Congress with the approval of the President of the United States. In its origin, therefore, it resembles the Royal Charters of Europe more than the written Constitutions of America. The Constitution of the Territory was literally handed down to the people who were governed under its provisions *without their own consent* directly given.

The first section purports to create a new Territory, by fixing the boundaries thereof and declaring that from and "after the

third day of July next, all power and authority of the Government of Wisconsin, in and over the Territory hereby constituted shall cease." On reading this section one is almost startled by the matter-of-fact way in which a body of legislators *seem* to have made a Constitution and established a new political society.

In providing for the executive department in the very next section the logical order of the Constitution of the United States was reversed by placing the executive "power and authority" before that of the legislative. This, however, was altogether natural, since the Governor had been the central figure in Territorial government ever since the days of the great St. Clair. He was no figure-head, but the real Government, influencing legislation as

well as directing the administration. Robert Lucas, the first of the Territorial Governors of Iowa, seems to have fully apprehended this fact, for from the very outset he made himself the real power in public affairs. The influence of the Governor was dominant in Territorial government chiefly because, like his prototype in the Colonies, he represented the majesty and the supreme authority of the National government.

"The executive power and authority in and over the said Territory of Iowa," runs the Organic Act, "shall be vested in a Governor, who shall hold his office for three years, unless sooner removed by the President of the United States." The Governor was appointed by the President, but must reside in the Territory and "shall take

care that the laws be faithfully executed. He was commander-in-chief of the militia and commissioned all officers appointed under the laws of the Territory. It was his to grant pardons for offenses against the laws of the Territory and provisional reprieves for offenses against the laws of the United States. Besides all this, he was Superintendent of Indian affairs for the National government.

In the government of the Territory of Iowa the Governor was something more than chief of the militia and author of commissions and pardons. Like the King of England, he was a constituent branch of the law-making body. Not only did the Organic Act declare "that the legislative power shall be vested in the Governor and a Legislative Assembly," but it gave to

the Governor the power of an absolute veto over all acts of the Assembly. Indeed, it was this extraordinary power to participate in legislation along with the power to appoint all inferior judicial officers, justices of the peace, sheriffs, militia officers, and county surveyors that gave our first Governor a real power and prestige not since enjoyed by any executive—State or Territorial.

A Secretary of the Territory was provided for in the third section. This officer stood next to the Governor in importance; and in case of the death, removal, resignation, or necessary absence from the Territory of the latter he was authorized and required to execute and perform the gubernatorial powers and duties. The Secretary was appointed by the President for a term

of four years, but was subject to removal at any time. His chief duty was to record and preserve the laws, acts, and proceedings of both the Legislative Assembly and the Governor, and yearly transmit copies thereof to the President of the United States and to the Speaker of the House of Representatives.

The legislative power was, by the fourth section of the Constitution, "vested in the Governor and a Legislative Assembly." The Assembly was a representative body organized on the bicameral plan into a "Council" and a "House of Representatives." The Council consisted of thirteen members, elected biennially; while the House of Representatives had just double that number, elected annually. The members of both houses were chosen directly

by the qualified voters of the Territory. They were elected by districts, and apportioned on the basis of population. The Assembly was to meet annually; "but no session in any year shall exceed the term of seventy-five days."

A lavish delegation of power was granted to the Legislative Assembly by the sixth section of the Constitution which provided "that the Legislative power of the Territory shall extend to all rightful subjects of legislation." Just what is meant by "rightful subjects of legislation" is nowhere stated. But from the pages of the Territorial statutes it is manifest that the important subjects of legislation were in general the establishment of local government, the creation of business and public corporations, the maintenance of the institution of

private property, the fulfilment of contracts, and the guarantee of personal security. The sphere of legislation granted to the Territory was larger than that reserved to the Commonwealth of Iowa.

It would, however, be a grave mistake to view the powers of the Legislative Assembly as unlimited, since the Constitution of the Territory contains (*a*) certain specific prohibitions, (*b*) a general limitation, and (*c*) a Bill of Rights. The specific prohibitions are: "no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents."

These specific prohibitions are followed

in the same section by the general limitation which reads: "All the laws of the Governor and Legislative Assembly shall be submitted to, and if disapproved by, the Congress of the United States, the same shall be null and of no effect."

The Territorial Bill of Rights as set forth in the Constitution is exceedingly brief—perhaps the shortest Bill of Rights on record. It consists of a single sentence and reads as follows: "The inhabitants of the said Territory shall be entitled to all the rights, privileges and immunities heretofore granted and secured to the Territory of Wisconsin and to its inhabitants." On its face this guarantee of the fundamental rights of man and of the citizen seems vague and unsatisfactory. But it is, nevertheless, large in implication. If we turn

to the Constitution of the Territory of Wisconsin to see what rights, privileges, and immunities were therein guaranteed, we find "that the inhabitants of the said Territory shall be entitled to, and enjoy, all and singular the rights, privileges, and advantages, granted and secured to the people of the Territory of the United States northwest of the river Ohio, by the articles of the compact contained in the ordinance for the Government of the said Territory, passed on the thirteenth day of July, one thousand seven hundred and eighty-seven; and shall be subject to all the conditions and restrictions and prohibitions in said articles of compact imposed upon the people of the said Territory." In other words, the provisions of the Ordinance of 1787 are by implication made a

part of the Constitution of the Territory of Iowa. Thus the people of Iowa inherited through the Territorial Constitutions of 1836 and 1838 the political principles of the great Ordinance of 1787 as a Bill of Rights.

Great was the legacy. Mark the classical expression of that instrument in enumerating the immemorial rights, privileges, and principles of Anglo-Saxon polity. "No person demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiments.... The inhabitants of the said Territory shall always be entitled to the benefits of the writ of *habeas corpus*, and of the trial by jury; of a proportionate representation of the people in the legislature, and of judicial proceed-

ings according to the course of the common law. All persons shall be bailable, unless for capital offences, where the proof shall be evident, or the presumption great. All fines shall be moderate; and no cruel or unusual punishments shall be inflicted. No man shall be deprived of his liberty or property, but by the judgment of his peers, or the law of the land, and should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his particular services, full compensation shall be made for the same. And in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made, or have force in the said territory, that shall, in any manner whatever, interfere with, or affect private contracts or

engagements, *bona fide*, and without fraud previously formed."

These words are more than formal expressions of great principles; they are ennobling. But to read farther, that religion, morality, and knowledge are necessary to good government and the happiness of mankind, and that there shall be neither slavery nor involuntary servitude in the said Territory, is to inspire reverence. Such, indeed, are the "liberties we prize" and the "rights we will maintain."

The judicial power of the Territory was vested by the Constitution in "a Supreme Court, district courts, probate courts, and in justices of the peace." The Supreme Court consisted of a Chief Justice and two associate justices. They were appointed by the President for a period of four years,

and were required to hold a term of court annually at the seat of government. The Constitution further directed (*a*) that the Territory be divided into three judicial districts, (*b*) that a district court or courts be held in each of the three districts by one of the judges of the Supreme Court, and (*c*) that the said judges reside in the districts respectively assigned to them.

The courts of the Territory of Iowa were "legislative courts," that is, courts created by Congressional legislation. The extent of their jurisdiction was much greater than that of State courts, since by the Organic Act they were empowered to exercise the customary jurisdiction of both State and Federal courts.

In addition to those already mentioned, the Constitution provided for two other

prominent Territorial officers, namely, a Marshal and an Attorney. Both were appointed by the President of the United States for a term of four years.

At the National Capital the Territory was represented by a Delegate who was elected by the people for a term of two years. The Delegate was entitled to a seat in the House of Representatives where he could participate in debate but was not allowed a vote.

One of the most significant sections of the Constitution is the fifth. It provides "that every free white male citizen of the United States, above the age of twenty-one years, who shall have been an inhabitant of said Territory at the time of its organization, shall be entitled to vote at the first election, and shall be eligible to any office

within the said Territory." Thereafter the suffrage qualifications were to be determined by the Legislative Assembly; "*Provided*, That the right of suffrage shall be exercised only by citizens of the United States."

Although the Organic Act of 1838 was almost a literal copy of the Organic Act of 1836, the following differences are worthy of observation: First, the term of the members of the Council was changed from four years in 1836 to two years in 1838. Secondly, the term of Representatives was changed from two years in 1836 to one year in 1838. Thirdly, the term of the judges of the Supreme Court was changed from "good behavior" in 1836 to four years in 1838. Fourthly, by the Organic Act of 1838 the judges of the Supreme Court

were required to reside in their respective districts. Fifthly, the salary of the judges of the Supreme Court was reduced from eighteen hundred dollars in 1836 to fifteen hundred dollars in 1838.

Reflection upon the history and provisions of the Constitution of the Territory leads to a few general conclusions. First, this Constitution was written i. e. codified. In the second place, it was an act of Congress. Again, its provisions represent political evolution in Territorial government up to the year 1838. Furthermore, government in the Territory, though subordinate, had a wider sphere of activity under the Organic Act than has ever since been enjoyed by government under a State Constitution. This is true, since the Legislative Assembly and the Territorial courts

exercised to a considerable extent the customary functions of both National and State governments. Still further, the President of the United States was in theory the head of Territorial administration, since he had the power to appoint and remove the chief administrative officers in the Territory. Finally, there existed in the machinery of Territorial government a nice balance between administration on the one hand and legislation on the other, that is, between the part which was responsible directly to the President of the United States and the part which was responsible directly to the people of the Territory.

VIII

THE CONSTITUTION OF THE TERRITORY AMENDED

No provision for its amendment is contained in the Organic Act of 1838; but by inference and implication it is clear that the power to change, alter, or amend the Constitution of the Territory resided in Congress. The process of amendment, therefore, was that of ordinary legislation.

Congress was not long in exercising this extraordinary power. On March 3, 1839, within eight months of the organization of the Territory, the President approved two acts amending the Constitution. These were: (1) "An act to alter and amend the

organic law of the Territories of Wisconsin and Iowa;" and (2) "An Act to authorize the election or appointment of certain officers in the Territory of Iowa, and for other purposes."

The first limited the veto power of the Governor by providing that bills not approved by him might, nevertheless, become laws if passed a second time by two-thirds of both houses of the Legislative Assembly.

The second likewise aimed at curtailing the powers of the Governor by authorizing the Legislative Assembly to "provide by law for the election or appointment of sheriffs, judges of probate, justices of the peace, and county surveyors."

The history of a quarrel between the Governor and the first Legislative Assem-

bly, which in a great measure occasioned these amendments, is significant in throwing light upon the political ideas and the democratic frankness and determination of the people of the Territory.

On July 7, 1838, President Van Buren issued a commission to Robert Lucas of Ohio, appointing him Governor of the new Territory of Iowa. The position was a difficult one to fill; but the President's selection promised to be the very best. Lucas was neither young, obscure, nor inexperienced. Born in Virginia, he had served with distinction in the War of 1812. He had served in the Legislature of Ohio, and had twice been elected to the office of Governor by the people of that State. In 1832 he acted as Chairman of

the first National Convention of the Democratic Party.

Upon receiving his commission as Governor of Iowa, Robert Lucas repaired with all possible haste to the West. Venerable with years and political experience, he arrived at Burlington in August, 1838. Here he found that Wm. B. Conway, the Secretary of the Territory, "had *assumed* the Executive prerogative, had issued a proclamation dividing the Territory into Judicial Districts, and was about issuing a proclamation apportioning the Representatives and ordering an election." The conduct of the Secretary provoked the Governor; and Robert Lucas was not the man to conceal his feelings or hesitate to express his mind. From that time to the death of the Secretary in November, 1839,

the two men were enemies. Lucas, in a letter to John Forsyth, Secretary of State, declared that Conway "has not only done nothing to render me assistance, but *is generally believed to be the prime mover of the opposition to my proceedings, and the author* of the documents forwarded to Washington by the members of the Legislature."

The first Legislative Assembly of the Territory of Iowa did not meet until November 12, 1838. On the first day of the session each house proceeded to organize *pro tempore.* Then they assembled jointly in the Hall of the House of Representatives to be sworn in by the Governor, and to receive any communication which his "Excellency" might have to make to them.

Governor Lucas delivered his first message in person. He took pains to emphasize the fact that the Organic Act had vested the legislative power in "the Governor and a Legislative Assembly," which meant that "the Executive is vested with advisory and restraining powers, and the Legislative Assembly with deliberative and enacting powers." "In no place," he declared later in a communication to the Secretary of the Territory, "is there any power vested in the Legislative Assembly independent of the Governor."

Throughout the message, which when printed covered ten pages of the journal, the Governor freely advised and recommended such measures as he deemed most expedient. Then near the close he boldly added: "I shall at all times take pleasure

in concurring with you in acts that tend to advance the general interests of the Territory, and the prosperity of the people;—but at the same time will be compelled to withhold my assent to such acts, or proceedings, as I may conscientiously for the time being believe to be prejudicial to the public good." Robert Lucas lived up to the spirit and the letter of his declaration.

In the matter of appointments the Governor's policy was courageously set forth in these words: "I shall at all times pay a due respect to recommendations; but cannot conscientiously nominate to office any individual of *bad moral character*, or, that may be addicted to *intemperance* or *gambling*, if known to me. These vices are so contaminating in their character, that all public officers in my opinion

should be clear of even a suspicion of being addicted to them." Lucas, writing some years later, was of the opinion that this declaration was one of the potent causes of opposition to his administration.

After the election of permanent officers, which followed the Governor's speech, the Legislative Assembly proceeded with energy and enthusiasm to the business of legislation. But not a few of its measures met with the disapproval of the Governor. It soon became evident that the relations between the Executive and the Assembly were not altogether cordial. The situation was made still more embarrassing by the ill feeling which existed between the Governor and the Secretary of the Territory. Indeed it is clear that Mr. Conway was instrumental in stirring up

much of the opposition to Governor Lucas by confiding his private grievances to members of the Assembly, by deferring to the Assembly to the point of servility, and by affecting to set up an administrative department distinct and separate from that of the Governor. On November 14, he submitted to the Council and House of Representatives the first of a series of communications bearing directly upon his own position and powers as Secretary and his relations to the Legislative Assembly, and indirectly upon his relations to the Governor and the relations of the latter to the Assembly.

It was early in the session that the Council and House of Representatives resolved "That when an act is presented to the Governor for his approval, he shall, within

a reasonable time thereafter, make known to the House in which said act may have originated of his approval thereof; or if not approved of, the act shall be returned, with his objections thereto." For some weeks after its passage, this resolution seems to have received no attention. Either there was delay in presenting it to the Governor, or the Governor did not give it his immediate attention. It was not until January 4, 1839, that the resolution was returned to the House of Representatives with this observation from the Governor: "I see no place in the organic law, that vests the Council and House of Representatives with the right to dictate to the Executive in the discharge of his official duties."

In the meantime the Council had taken

steps looking toward the regulation by statute of all official intercourse between the legislative and executive departments of the government. On December 4, 1838, a committee of two was appointed to confer with the Governor and report a bill. The committee held the conference and reported a bill on the day following. After some discussion the bill passed the Council on December 11, but not without important amendments. On the day following, the bill as amended passed the House of Representatives. It was presented to the Governor on the 18th.

On December 19, Lucas returned the bill to the Council with his veto. He objected to the changes which had been made in the bill as originally reported by the committee. At the same time he took

occasion to state, for the information of the Assembly, the course he intended to pursue in the future. He said: "All bills, resolutions, or memorials, submitted to me, will be carefully examined, and if approved, will be signed and deposited in the office of the Secretary of the Territory. If special objections are found, but not sufficient to induce me to withhold my assent from the bill, resolution, or memorial, a special note of explanation will be endorsed with my approval. Bills, resolutions, or memorials, that may be considered entirely objectionable, or of doubtful policy, will be *retained under advisement* or returned to the Legislative Assembly, with my objections, at such time, and in such way and manner as I may, for the time being, deem to be most advisable."

In reply to all this it was "Resolved, By the Council and House of Representatives of the Territory of Iowa, That his Excellency Gov. Lucas, is hereby respectfully requested to inform each House of the Legislative Assembly, of all acts by him approved during the present session; and that he is further requested hereafter to inform the House in which a bill originated of his approval thereof immediately after the same has been given."

With a brief message, Lucas returned this resolution to the House of Representatives on January 5, 1839. He would at all times be pleased to comply with requests from the Assembly, provided it "could be done with some propriety and conscience; but having neither secretary, clerk, messenger, assistant or other attend-

ant, in public employ, at the Executive office, ... I must respectfully decline a compliance with your respectful request, and most respectfully invite your attention to my communication of the 19th December last."

Two days later a committee of the House of Representatives headed by James W. Grimes reported on the Governor's vetoes. They held that the "various Executive vetoes" were not only uncalled for, but were unwarranted by the Organic Act of the Territory. The phrase in the Constitution which reads, "shall approve of all laws," is mandatory and leaves the Executive without discretion. The committee took the whole matter very seriously, believing that great principles were at stake. "As representatives of the peo-

ple," they declared, "we conceive that we should be recreant to their rights and true interests, if we should acquiesce in the 'veto power' as used by the Executive .... We believe the people should be heard through those who represent them and are responsible to them. That their wishes should be regarded, and not the wishes of the Federal Government or a federal officer. We believe the principle claimed by the Governor is a most dangerous and pernicious principle, and as the representatives of freemen we cannot acquiesce in it."

A week later the House "Resolved, That Robert Lucas is unfit to be the ruler of a free people," and appointed a select committee to prepare a memorial to the President of the United States praying for his immediate removal.

The Council committee on Territorial Affairs was no less emphatic in its condemnation of the "Executive Vetoes." They did not believe that Congress in framing the Organic Act intended to confer the power of an absolute veto upon the Governor. In their report of January 22, 1839, upon the bill regulating the intercourse between the executive and legislative departments, they exclaimed: "It is time to remonstrate. The liberty of the people should be dear to their representatives, and he who DARES not defend their sacred rights, who would not, in the hour of peril, stand as a sentinel to guard their privileges, is unworthy the name of a freeman."

In the meantime the Legislative Assembly had prepared a memorial to Congress requesting an amendment to the Organic

Act which would limit the Governor's veto power.

The Governor remained firm and unmoved to the end of the session. Notwithstanding all the resolutions, reports, and memorials of the Assembly, he continued to approve some measures, veto others, and endorse still others with special notes of explanation.

Nor did the indignation of the members of the Legislative Assembley subside as the session neared its close. They now hoped to get rid of the Governor. So they addressed a memorial to "His Excellency Martin Van Buren, President of the United States," in which they enumerated at length "the faults of Governor Lucas' administration," and asked for his immediate removal from the office of Chief

Executive. In the House of Representatives the minority offered a preamble and resolution praying that they be allowed to forward a counter memorial to the President, but on the motion of James W. Grimes their preamble and resolution were rejected.

This remarkable memorial concerning Robert Lucas reads much like the arraignment of King George III in the Declaration of Independence. In the political history of Iowa it stands as the declaration of the independence of the will of the representatives of the people as over against the will of the administration. It stands as the protest of Democracy against the exercise of arbitrary power. Its significance lies not in any statement or misstatement of historical facts, but in

the spirit of independence, courage, and democracy which pervades its lines.

When the Legislative Assembly met in November, 1839, the storm had passed. The Constitution of the Territory had been amended. Robert Lucas was still in office. But, reflecting upon the situation, he could truthfully say in his message: "It is with heartfelt gratitude to Almighty God.... that I am, through His *special Providence*, permitted again to address the Legislative Assembly."

IX

AGITATION FOR A STATE CONSTITUTION

The early agitation for the establishment of a State government cannot justly be interpreted as opposition to the Constitution of the Territory, or as disaffection with the Territorial government. On the contrary, it was altogether natural for the people who settled in the new Territory west of the Mississippi to look forward to the early establishment of a State government. Never in the history of the United States had Territories been viewed as permanent. In fact it was everywhere understood that the Territorial organization was at most a temporary arrangement which in time would give

way to the more perfect Constitution of the Commonwealth. Then, too, in the case of Iowa there was such a rapid growth of population that admission into the Union could not be long delayed under any circumstance. Mr. Shepard was right when in 1838 he said: "If the Territory of Iowa be now established, it will soon become a State."

The movement for the establishment of a State government was inaugurated by Robert Lucas in his message to the second Legislative Assembly which met at Burlington on November 4, 1839. The Governor was of the opinion that in view of the "rapidly increasing population, and advancing prosperity of the Territory" the Assembly might "with propriety proceed to measures preparatory to the formation of a Constitution and State government." He knew

that some would object to such measures as premature, "inasmuch as our expenses are defrayed by the United States," while the financial burdens of a State government would all have to be borne by the people. But, argued the Governor, did not prosperity and improvement within the States of Ohio, Indiana, Illinois, and Michigan languish during the Territorial period, and then advance "with rapid strides from the moment of their several admissions into the Union as independent States?" To his Excellency these historical "facts" were conclusive. The inference was clear in his mind. Prosperity and improvement result from the establishment of State government. So he earnestly recommended to the Legislative Assembly "the early passage of a memorial to Congress, respectfully

asking of that body the passage of an Act, at their ensuing session, granting to the inhabitants of Iowa Territory the right to form a Constitution and State Government, and to provide for their admission into the Union upon an equal footing with the original States." Furthermore, he recommended "the passage of a law to provide for the calling of a convention to form a state constitution, so soon as Congress may grant by law the privilege to do so." The Governor was seriously in earnest. He even went so far as to recommend definite boundaries for the proposed Commonwealth.

Lucas was not alone in these advanced views. The newly elected President of the Council, Stephen Hempstead, thought that, notwithstanding the fact that the "Terri-

tory is yet in the bloom of infancy," only a "short period will elapse before Iowa will become a State." "You, gentlemen," he said, addressing the members of the Council, "are placed here for the purpose of maintaining her rights as a territory, to enact salutary laws for her government and to prepare her for an admission into the Union, under the great principles of civil liberty."

But the Legislative Assembly was more conservative. At the regular session of 1839–40 it neither memorialized Congress on admission into the Union nor passed a law providing for the calling of a Convention to form a Constitution. In opposition to the recommendations of the Governor and the views of a minority in the Assembly, it was argued (1) that the establish-

ment of State Government would increase the burdens of taxation "which must render the new State government burthensome as well as odious to the people," (2) that "it could not add to the prosperity of the agriculturalist, the merchant, the miner, or the mechanic; nor could it render any more fruitful the sources of profit which are open to honest industry and application," and (3) that the people of the Territory enjoy under the acts of Congress ample liberty and freedom in self-government. The second Legislative Assembly of the Territory was not willing to assume the responsibility of measures looking toward so radical a change in the political status of the people of Iowa. On January 17, 1840, it adjourned only to meet again in extra session later in the year.

In the meantime the Committee on Territories in the House of Representatives had reported a bill enabling the people of Iowa to form a Constitution and State government. This gave Lucas an opportunity of directing attention again to the matter in which he was so deeply interested. When the Assembly met in extra session July 13, 1840, he was prepared with a suggestion that was as reasonable as it was democratic. He would have the whole question referred to the people for decision.

Presuming that the bill before Congress would pass, Lucas ventured to "suggest to the Legislative Assembly the expediency of providing by law for taking the sense of the people of this Territory on the subject of a convention at the next ensuing annual election." "It appears to me," he said,

"that there can be no objection to submitting the subject to the people for their consideration, as an expression of public opinion through the ballot-box would enable the ensuing Legislative Assembly to act understandingly, and in accordance with the expressed will of the people on this important subject."

Following the suggestion of the Chief Executive the Assembly provided by law for obtaining the wishes of the people at the annual August elections. All who favored the calling of a Convention were required to write "convention" on their ballots; while all who opposed the proposition were required to write "no convention." The law having been approved by the Governor on the last day of July, very little time was left for its consideration by the electorate before the elections.

When the official returns were counted the Governor in a proclamation declared the result to be 937 votes for and 2,907 votes against a Convention. The defeat, which was decisive, indicated that the squatters had not yet paid for their claims. And so the Organic Act of 1838 continued to serve the people of Iowa as the code of fundamental law. Robert Lucas was disappointed, but he had to admit that the Territory went on increasing in population and wealth with phenomenal rapidity, notwithstanding the "facts" in the history of the Old Northwest. Not even the "imperfect conditions of Territorial government" seemed to affect in the slightest degree the economic prosperity and improvement of this frontier community.

The overwhelming defeat of the Conven-

tion proposition at the polls checked for a time all agitation in favor of a State Constitution. Even the Governor, who up to this time had been its most sanguine advocate, declared in his message of November that since the people had expressed their preference for Territorial Government, "all further legislation on the subject at the present session" is precluded. The question now remained in *statu quo* for over a year, that is, from August, 1840, to December, 1841.

In the meantime Robert Lucas had served out his full term of three years. There was no chance for his reappointment since the Democrats had lost the Presidency in the elections of 1840. The new Whig President, William Henry Harrison, appointed John Chambers, of Kentucky, to

succeed the Ohio statesman. Again Iowa was fortunate in securing as Governor a man of experience and of National reputation.

When Governor Chambers sent his first message to the Legislative Assembly in December, 1841, he thought he had reason to believe that if the question of a Convention were again submitted to the people there would be evidenced by them a marked change in sentiment. Why? The answer was clearly set forth in the message. First, the population of the Territory had increased phenomenally since August, 1840. Secondly, Congress had passed the "Distribution Act" which provided (*a*) that Iowa should participate in the *pro rata* distribution, along with the twenty-six States and three Territories, and the District of

Columbia, of the net proceeds of the sales of public lands, and (*b*) that five hundred thousand acres of land for internal improvements should be granted to every new State that should be admitted into the Union. John Chambers thought the liberal provisions of the Distribution Act would remove the grounds of all objections based upon the argument that State organization would be followed by burdensome taxes. In the light of these considerations he recommended that the question of a Convention be again submitted to the people.

Following this recommendation, the third Legislative Assembly passed "An Act to provide for the expression of the opinion of the people of the Territory of Iowa, upon the subject of the formation of a State Constitution and Government, and

to enable them to form a Constitution for the State of Iowa," which act was approved February 16, 1842. Its provisions were as elaborate as its title.

A poll was to be opened at each electoral precinct at the time of the general election in August. As the qualified electors approached the polls they were to be asked by the judges of election whether they were in favor of or against a Convention. Thereupon the electors were to answer simply, "Convention" or "No Convention." The clerks of election were charged with keeping a record of these *viva voce* votes.

The act provided further, that should a majority of the votes polled be found to favor a Convention, then eighty-two delegates to such a Constitutional Convention were to be elected on the second Tuesday

in October next after the election aforesaid. On the first Monday of November next following their election, the delegates elected were to meet at Iowa City "and proceed to form a Constitution and State Government, for the Territory of Iowa."

Finally it was provided "that when a Constitution and form of State Government" shall have been adopted by the Convention, the same shall be published in the newspapers of the Territory and voted upon by the people at the next general election, which would be held in August, 1843.

The Governor's message and the measure inspired by it were clear, full, and to the point. They called up for public consideration the whole problem of State organization in its several phases of (*a*) the call-

ing of a Constitutional Convention, (*b*) the formation of a State Constitution, and (*c*) the admission of the State into the Union. They opened up a lively political discussion which was to continue for full five years.

As to the propriety and wisdom of calling a Constitutional Convention there was from the beginning a decided difference of opinion. The act of February 16, 1842, had met with strong opposition in both houses of the Legislative Assembly. In the press and among the people of the Territory the question became, naturally enough, the local issue in party politics. The Democrats who had fathered the measure in the Assembly were everywhere heartily in favor of State organization, but the Whigs, who, being in the minority, would neither control the Convention nor

officer the new State government, were vigorous in their opposition.

Three days after the approval of the act of the Assembly there appeared in the *Iowa City Standard* a remarkable letter. Its author was Francis Springer, a member of the Council and a Whig of considerable influence. His letter was in substance "a speech prepared by him to be delivered in the Council on the bill relating to the Convention, but not delivered because shut down by the majority."

From this speech it appears that the bill relative to State organization, as originally introduced, provided for a vote of the people on the question of a Constitutional Convention and the election of delegates at the same time. This was confusing, since the election of delegates assumed a

favorable vote on the question of a Convention.

But Mr. Springer was opposed to the bill in any form. He thought that since the people had not expressed a contrary opinion their adverse vote in 1840 "ought to settle the question." He intimated that the bill sought to create places for disappointed politicians. Certain prominent Democrats — notably Robert Lucas and Judge Williams — had recently lost their positions. "So offices must be created for them. Hence the proposition to create a State Government." Furthermore, Mr. Springer opposed the bill because State organization would greatly increase the burdens of local taxation. Nor was the recent legislation of Congress a satisfactory reply; for in his opinion the benefits to be

derived from the Distribution Act would after all be inconsiderable.

Satisfied with existing conditions, he asked: "Are we slaves? Is our liberty restricted? Are we deprived of the rights, immunities, and privileges of American citizens? Is the rod of oppression held over us by the General Government? Has that Government manifested its care towards us by sending persons to 'spy out our liberties, misrepresent our character, prey upon us, and eat out our substance?' It is not pretended that there is a murmur of the kind. We are in possession of the most enlarged liberty and the most liberal favors. Then why urge this measure, uncalled for by the people, unwarranted by the condition of the Territory?"

The newspapers of the Territory were

divided on party lines. The Democratic press favored the calling of a Convention and urged the immediate organization of a State government; while the Whig press just as vigorously opposed all such measures from the calling of a Convention to admission into the Union.

In favor of a Constitutional Convention it was urged that the admission of Iowa into the Union would result in a more rapid increase in the population by immigration, since immigrants as a rule preferred States to Territories. Again, admission into the Union would give Iowa more influence at Washington, which would probably mean generous appropriations by Congress for the improvement of the rapids of the Mississippi. Politically the change would place the new Commonwealth on an equal

footing with the other States, give the people a voice in the election of a President in 1844, and secure to them the long desired privilege of choosing their own Governor. It was even claimed that Statehood would promote character, foster independence, engender State pride, and inspire dignity, since "it would secure to us the noblest privilege of freemen! that of electing our own officers to govern over us, instead of being subjected to the additional humiliation of having them sent from abroad for that purpose." Finally, it was suggested that if Iowa did not hasten to make application for admission into the Union, Florida, the slave Territory which was then ready to be admitted, would be paired with Wisconsin.

These arguments were frequently accom-

panied by declamation and exhortation. The Territorial state was declared to be a condition of "colonial dependence" or "colonial vassalage." And so the question before the people was set forth as one of "Dependence" or "Independence." Will they support the proposition to establish a State government and thus follow in the footsteps of the Fathers of the Revolution? Or will they oppose the proposition and thereby brand themselves as Tories? To the advocates of State government the way was clear. "The freemen of Iowa should rise and strike for independence."

On the other hand, the opponents of State organization were quite willing "to let good enough alone." They were satisfied with Territorial government and saw no good reasons for a change. They were

not unmindful of the fact that under the existing arrangement the expenses of the Territorial government were paid out of the Treasury of the United States. Then, too, the Whigs thought that the whole movement in favor of a State government savored of "jobs" and party aggrandizement. "It is evident," they said, "that a scheme is maturing with the Loco-focos of this Territory to involve the people in the support of a State government" for the "express purpose, as we believe, of benefitting such men as Ex-Governor Lucas (Lord Pomposity) and Judge Williams, and a few others of the same stamp."

Furthermore, some declared that Iowa was too young for Statehood, her resources were too limited, and the people were hardly prepared for the adoption of State govern-

ment. Mr. Lowe argued that the change would be undesirable because there really were no eminent men in the Territory fitted for the tasks of State government. This was intimating that the pioneers of Iowa were incapable of self-government.

But the vital argument against this or any measure looking toward the establishment of a State government was the one which appealed directly to the people as tax-payers. Under the Organic Act of 1838 the United States generously assumed the burden of supporting the general government of the Territory, and so the salaries of Governor, Judges, Secretary, Attorney, and Marshals, the *per diem* allowance of the members of the Legislative Assembly, the expense of printing the laws, the contingent expenses of the Terri-

tory, and other incidental expenses were all paid out of the Treasury of the United States. Public buildings were erected out of funds drawn from the same source. But a change from Territorial to State organization meant that in the future these public expenditures would have to be met by warrants drawn on the Treasury of the State, the coffers of which must be supplied through local taxation. The people protested. The men who were industriously breaking the prairies, clearing the forests, and raising corn preferred to invest their small earnings in lands and plows and live stock.

An attempt was made to answer this argument. It was confidently asserted that the additional expense entailed by a State government would not exceed thirty thou-

sand dollars annually. Nor would this amount have to be contributed by the people of Iowa, since it was estimated that the benefits to be derived from the Distribution Act would more than meet all additional obligations. Besides the State would receive five hundred thousand acres of land as a gift; while all the lands reserved for the support of schools could, under State organization, be used for such purposes.

The answer was of little avail. No one could predict with certainty the operation of the Distribution Act. Under the circumstances a majority of the voters were not willing to abandon the Territorial organization for the "dignity" of a Commonwealth government. At the general elections in August, 1842, every County in

the Territory returned a majority *against* a Convention. Again the existence of the Organic Act of 1838 as a code of fundamental law was prolonged by a vote of the people.

Again the agitation for a State Constitution remained in abeyance for over a year, that is, from August, 1842, to December, 1843. In the meantime there were at least some immigrants who did not "prefer States to Territories." By May, 1844, the population of the Territory numbered over seventy-five thousand souls.

When the Legislative Assembly met in December, 1843, Governor Chambers was confident that the population of Iowa had "attained a numerical strength" which entitled the people to a participation in the government of the Union and to the full

benefits of local legislation and local self-government. He therefore recommended in his message that provision be made for ascertaining the wishes of the people "in relation to this important matter." At the same time he advised the Assembly to "apply to Congress to fix and establish, during its present session, a boundary for the proposed State, and to sanction the calling of a Convention and to make provision for our reception into the Union as soon as we shall be prepared to demand it."

The Governor's reference at this time to a possible boundary dispute is interesting in the light of subsequent events. He says: "The establishment of a boundary for us by Congress will prevent the intervention of any difficulty or delay in our admission into the Union, which might result

from our assuming limits which that body might not be disposed to concede to us."

The Legislative Assembly responded promptly to the suggestion that the people of the Territory be given another opportunity to express an opinion on what had come to be the most interesting question in local politics. As early as Febuary 12, 1844, "An Act to provide for the expression of the opinion of the people of the Territory of Iowa upon the subject of the formation of a State Constitution for the State of Iowa" was approved by the Governor. In substance this act was practically a restatement of the provisions of the act of February 16, 1842. The *viva voce* vote was to be taken at the Township elections in April, 1844.

In many respects the campaign of the

spring of 1844 was a repetition of the campaign of 1842. On the main issue the political parties were divided as before, that is, the Democrats favored and the Whigs opposed the calling of a Convention. In the public speeches and in the utterances of the press there was little that was new or refreshing. All the old arguments of 1840 and 1842 were dragged out and again paraded through the editorial columns of the newspapers. Again the opponents of State organization talked about the certain increase in the burdens of taxation and intimated that the whole movement was set on foot for no other purpose than to provide places for Democratic office-seekers. Again the ardent supporters of State government ignored the latter charge and replied to the taxation

argument by quoting the provisions of the Distribution Act. Altogether the discussion lacked freshness, force, and vigor — it was stale and hackneyed. Two years of growth and reflection had wrought a change in sentiment. The public mind had evidently settled down in favor of State organization. At the elections in April the people returned a large majority in favor of calling a Constitutional Convention.

This first move in the direction of Statehood having been made by the people, it now remained to take the several additional steps of (1) the election of delegates to a Constitutional Convention, (2) the drafting of a State Constitution, (3) the adoption of such a Constitution by the people, and (4) the admission of the new State into the Union.

X

THE CONVENTION OF 1844

In accordance with the provisions of the act of February 12, 1844, and the act of June 19 amendatory thereof, seventy-three delegates to a Constitutional Convention were elected at the general Territorial elections in August, 1844. These delegates were chosen on partisan grounds. With the electorate the primary question was not, "Is the candidate well grounded in the principles of government and administration?" but "What are his political affiliations?"

When the votes were counted it was found that the Democrats had won a great

victory. The Whigs had not succeeded in electing one third of the whole number of delegates.

Events were making rapidly toward the realization of State government. On Monday, October 7, 1844, sixty-three of the delegates elected met in the Old Stone Capitol at Iowa City and organized themselves into a constituent assembly.

The meeting was informally called to order by Francis Gehon of Dubuque County. Ralph P. Lowe was chosen to act as President *pro tem.* After a temporary organization had been fully effected the Convention of 1844 was formally opened with prayer. Upon the call of Counties by the Secretary the delegates presented their credentials and took their seats. One committee was appointed to examine credentials,

and another to draw up rules of proceeding. The Convention then adjourned for the day.

When the Convention met on Tuesday morning the Committee on Credentials presented the names of all the delegates who had produced certificates of election. A report from the Committee on Rules was laid on the table. Mr. Bailey's resolution that "the editors of this Territory be permitted to take seats within the bar of this House" was adopted. The Convention then proceeded *viva voce* to the election of permanent officers, that is, a President, a Secretary, an Assistant Secretary, a Door-Keeper, and a Sergeant-at-Arms.

The honor of the Presidency fell to Shepherd Leffler of Des Moines County. George S. Hampton and Alexander B. Anderson, who were elected Secretary and

Assistant Secretary respectively, were not members of the Convention. Warren Dodd was elected Sergeant-at-Arms, and Ephraim McBride, Door-Keeper.

Upon being conducted to the chair Mr. Leffler addressed the Convention in a most earnest manner. He tried to impress upon the members the serious importance of the work before them. "You meet gentlemen," he said, "on an occasion of the deepest interest. We are in the progress of an important change, in the midst of an important revolution, 'old things are to be done away and all things are to become new.' The structure and organization of our government are to be changed, territorial relations with the parent government are soon to cease, and Iowa must soon take upon herself the duties and the responsi-

bilities of a sovereign State. But before this important change can be fully consummated, it is necessary for us to form a republican constitution, for our domestic government. Upon you, gentlemen, a confiding people have entrusted this high responsibility. To your wisdom, to your prudence, to your patriotism, they look for the formation of that instrument upon which they are to erect the infant republic —under your auspices the youngest and fairest daughter of the whole American family is to commence her separate political existence, to take her rank in the Union of the American States, and to add her star to the proud flag of our common country. Recollect, gentlemen, that the labor of your hands, whatever may be its fashion, will not be the fashion of a day, but permanent,

elementary, organic. It is not yours to gild or to finish the superstructure, but to sound the bottom, to lay the foundation, to place the corner stone. Unlike the enactments of mere legislation, passed and sent forth to-day and recalled to-morrow, your enactments, when ratified by the people are to be permanent and lasting, sovereign and supreme, governing, controlling and directing the exercise of all political authority, executive, legislative and judicial, through all time to come."

Mr. Leffler hoped that the Convention would frame a Constitution which would, "in all its essential provisions, be as wise and as good if not wiser and better than any other instrument which has ever yet been devised for the government of mankind," so that "Iowa, young, beautiful and

blooming as she now is, endeared to us by every attachment which can bind us to our country, may at no distant day, for every thing that is great, noble or renowned, rival if not surpass the proudest State of the American confederacy."

On the same day, and after the election of officers, the report of the Committee on Rules was taken up, slightly amended, and adopted. In the afternoon Mr. Hall, who came from a back county in which no newspapers were printed, moved "that each member of the Convention have the privilege of taking twenty copies weekly of the newspapers published in this city," and at the expense of the Convention. A lively discussion followed. Some favored the motion because its object was to provide the people with information concern-

ing the Convention, others because they had already promised papers to their constituents. But Mr. Grant thought that it was both useless and corrupt. The delegates had come to the Convention with economy on their lips and therefore should resist such "useless expenditures." The motion was lost.

On the third day standing committees were announced on the following subjects: (1) Bill of Rights; (2) Executive Department; (3) Legislative Department; (4) Judicial Department; (5) Suffrage and Citizenship; (6) Education and School Lands; (7) Incorporations; (8) State Boundaries; (9) County Organization; (10) Internal Improvements; and (11) State Debts. The Convention was now in condition to take up the great task of drafting a code of

fundamental law. On Thursday — the fourth day — the real work of the Convention began with a report from the Committee on State Boundaries.

Of the seventy-two members who labored in the Convention and signed the Constitution there were twenty-one Whigs and fifty-one Democrats. Twenty-six of the delegates were born in the South, twenty-three in the Middle States, ten in the New England States, ten in the States of the Old Northwest, one in Germany, one in Scotland, and one in Ireland. Of those born in the United States thirteen were from Pennsylvania, eleven from Virginia, nine from New York, eight from Kentucky, eight from Ohio, six from North Carolina, six from Vermont, and one each from Massachusetts, Connecticut, New

Hampshire, Maine, New Jersey, Tennessee, Indiana, and Illinois. The oldest member was sixty-six, the youngest twenty-seven; while the average age of all was about forty years. As to occupation or profession, there were forty-six farmers, nine lawyers, five physicians, three merchants, two mechanics, two miners, two millwrights, one printer, one miller, and one civil engineer.

The Convention lost no time in procrastinating delays. Committees were prompt in making reports. Parliamentary wranglings were infrequent. There was no filibustering. The discussions were, as a rule, neither long, wordy, nor tiresome. Indeed, the proceedings were throughout conducted in a business-like manner. The Democrats were determined to frame a Constitution

in accordance with what they were pleased to call "the true principles of Jeffersonian Democracy and Economy." They had the votes to carry out this determination.

And yet the proceedings of the Convention were by no means formal and without enlivening discussion. The fragments of the debates which have come down to us contain many remarks suggestive of the life, character, and political ideals of the people of early Iowa. For example, the discussion concerning newspapers, already referred to, brought out an expression of the popular ideal of economy and frugality. To be sure, newspapers containing information concerning the Convention and the fundamental instrument of government which was in the process of making would, if circulated widely throughout the Terri-

tory, educate and enlighten the people. But since the proposition involved the expenditure of several hundreds of dollars it was extravagant. The sacred principle of "Economy" could not be sacrificed to enlightenment. This pioneer ideal of thriftiness persisted among the Iowans for more than a generation.

Strict even to parsimoniousness in the matter of public expenditures, the pioneers of Iowa were not always puritan in observing the forms of religion. Their liberal attitude and their fearless courage in expressing views on so delicate a subject were displayed in an interesting debate in the Convention on a resolution offered by Mr. Sells to the effect "that the Convention be opened every morning by prayer to Almighty God."

Mr. Chapman favored the resolution, since "the ministers would gladly attend and render the services without compensation."

Mr. Gehon objected on the ground that "it would not be economical, for the Convention sat at an expense of $200 to $300 per day, and time was money."

Mr. Hall moved to amend the resolution so that the exercise of prayer might "commence at least one half hour before the assembling of the Convention." But Mr. Chapman thought that such a provision would be an insult to the Clergy and to "those who believed in the superintendence of Almighty God."

Mr. Kirkpatrick said that he too believed in a "superintending Providence" that "guided and controlled our actions."

He was a firm believer in Christianity, but he "did not wish to enforce prayer upon the Convention." Prayer, he argued, was a moral precept which could not be enforced without violating or infringing the "natural right" of the members to worship God each in his own way. If "we can enforce this moral obligation, then we have a right....to make every member of this Convention go upon his knees fifty time a day." Mr. Kirkpatrick cared nothing for precedent. "This was a day of improvement. Let those who believed so much in prayer, pray at home." After all "public prayer was too ostentatious."

Mr. Sells was shocked, and would "regret to have it said of Iowa that she had so far travelled out of Christendom as to deny the duty of prayer."

Ex-Governor Lucas, who was a member of the Convention, was astonished at Mr. Hall's amendment. He said that "if ever an assemblage needed the aid of Almighty Power, it was one to organize a system of Government." Furthermore, he believed that "it was due to the religious community, and to our own character" to have prayer. To reject the resolution would, he thought, "give us a bad name abroad."

Mr. Hooten reminded Lucas of the story told of Franklin, who, when a boy, asked his father why he did not say grace over the whole barrel of pork at once.

Mr. Hall was "opposed to any attempt on the part of the Convention to palm themselves off to be better than they really were, and above all other things, to assume a garb of religion for the purpose of giv-

ing themselves character." He doubted the efficacy of prayers invoked at political meetings, and cited an instance where a "Reverend gentleman" fervently prayed for the release of Dorr, the election of Polk and Dallas, and the triumph of Democratic principles. To believe in the efficacy of such a prayer implied that "Deity was a Democrat." Now, "if the Almighty was a Democrat, he would perhaps grant the prayer; if not a Democrat he would not grant it." Mr. Hall desired to know what was to be prayed for in the Convention. As for himself, "he would pray as did the man in New Orleans, that God would 'lay low and keep dark,' and let us do the business of the Convention." Prayers in the Convention were, he thought, inappropriate. "There were places where the Al-

mighty could not be approached in a proper spirit—and this was one."

Mr. Bailey asked the members who voted against taking papers on the grounds of economy to be consistent and vote against this resolution to have prayers. It would save some two or three hundred dollars. Then, too, he thought that "people were becoming more liberal in [their religious] sentiment. No man could say that he ever opposed another on account of religion; he respected men who were sincerely religious; but he wanted to have his own opinions." Mr. Bailey feared that members might be compelled, under the resolution, "to hear what they were opposed to. This was contrary to the inalienable rights of man. If members did not feel disposed to come, it took away their

happiness, contrary to the Declaration of Independence and the principle laid down by Thomas Jefferson, the Apostle of Liberty."

Mr. Cutler said that "he had not lived a great while, but long enough not to be afraid of meeting such a question openly." He opposed the resolution and desired the yeas and nays recorded on the motion.

Mr. Fletcher "regretted the opposition that he saw, and was unwilling that it should go forth to the world that Iowa refused to acknowledge a God."

Mr. Evans did not believe in progression to the exclusion of prayer. He favored "providing a room for those who did not wish to hear prayers."

Mr. Hepner opposed the resolution because he thought that it was inconsistent

with the principle of religious freedom as set forth in the Bill of Rights.

Mr. Shelleday wished to represent the moral and religious feelings of his constituents by supporting the resolution.

Mr. Quinton thought that his constituents were as moral as those of Mr. Shelleday. But he "did not believe praying would change the purposes of Deity, nor the views of members of the Convention." "In the name of Heaven," he exclaimed, "don't force men to hear prayers."

By a vote of forty-four to twenty-six the resolution was indefinitely postponed.

The liberal religious spirit of the pioneers is further evidenced by the principle of toleration which was incorporated into section four of the Bill of Rights. As introduced by the Committee the section

provided that "no religious test shall be required as qualification for any office or public trust, and no person shall be deprived of any of his rights, privileges, capacities, or disqualified for the performance of any of his duties, public or private, in consequence of his opinion on the subject of religion." Mr. Grant thought that the report "was meant to cover *everything.*" But, to make sure that it did not exclude Atheists from giving testimony in the courts, Mr. Galbraith moved to insert the words "or be rendered incompetent to give testimony in any court of law or equity."

Mr. Lowe, of Muscatine, favored leaving the law on this subject as it was; that is, he thought that "Atheists should not be admitted to give testimony" because "there

was nothing that such a person could swear by. An oath called upon Deity to witness the truth of what was said, and to withdraw his favor from the person if it was untrue. Atheists consequently could not take an oath." It would be "unsafe" to permit them to testify.

Mr. Hempstead wanted to "do away with this inquiring into a man's religious opinions. He desired to keep it out of the Constitution. It was the fear of the penalties of perjury that restrained men from stating what was not true—not future punishment."

Mr. Kirkpatrick thought that to refuse to allow Atheists to testify would be an "infringement of the natural rights of man."

Mr. Grant said that "he hoped this Convention would take high grounds upon

this subject and silence.... these inquiries into men's belief, and exclusions for opinion's sake."

When the test vote was taken it was found that only ten members of the Convention were willing to deny to Atheists the right to give testimony in the courts.

An interesting debate on salaries led to the adoption of section thirty-five, Article IV., of the Constitution which fixed the compensation of the State officers "for the first ten years after the organization of the government." The discussion was provoked by a report from the Committee on State Revenue in which the following salaries were recommended: For Governor, $1000; for Secretary of State, $500; for Treasurer, $400; for Auditor, $700; for Super-

intendent of Public Instruction, $700; and for Judges of the Supreme Court, $800. Several motions were made which aimed to increase slightly the sums recommended by the Committee; but the bent of the Convention was manifestly in favor of a reduction of salaries all along the line.

Sums ranging from $600 to $1200 were suggested for the Governor. Mr. Hooten "thought the salary was about right at $1000. The Governor was rather than else considered as public property, would have to entertain a good deal of company, &c., and should have a pretty liberal salary." Mr. Davidson said that "he came here for low salaries. He did not like $1000, but $1200 was worse." The Convention finally agreed upon $800 as a proper salary for the Governor of the State

of Iowa. No cut was made in the sum ($500) reported for the Secretary of State; but the Treasurer's salary was reduced to $300. The Convention was willing that the Judges of the Supreme Court should receive the same pay as the Governor, that is, $800.

The Auditor's salary received the most attention. The Committee on State Revenue had recommended $700. "Mr. Grant moved to strike out $700, which would leave the salary blank."

Ex-Governor Lucas hoped that the salaries would not be reduced so low that competent men could not afford to accept them.

Mr. Chapman "desired to pay a fair price for services rendered, but he was not willing to pay a single dollar for dignity.

He did not want to have men paid to live as gentlemen, with no services to perform. .... What were the duties of Auditor, that they could not be performed for a salary of $500 or $600? A farmer toiled from the rising of the sun to its going down, and at the end of the year had not perhaps $100;—there were hundreds of men qualified for that office who labored the whole year for less than half of $700. In this country we are all poor, and have to do with but little."

Mr. Strong came to the Convention with a "desire for economy, and felt disposed to go for as low salaries as any man; but he thought gentlemen were disposed to reduce them too low."

Mr. Hempstead thought that the Convention was "running this thing of econ-

omy into the ground." He knew that there were men who would take the offices at almost any salary; but "they would plunder to make it up."

Mr. Quinton declared that the services rendered by the Auditor were not worth more than $400. He would "continue to advocate economy in the State offices, whether it was displeasing to some gentlemen or not."

Mr. Fletcher supported the recommendation of the Committee on State Revenue because the object was to secure as Auditor a man of "the best business talents."

Mr. Hall observed that the proposition to pay "such large salaries to our officers was based upon a misunderstanding of the importance of our little State. We were just commencing to totter, and not to walk."

Mr. Harrison said "we were in a youthful condition, and were poor, and we could not afford to pay such salaries as the great and wealthy State of Ohio." Furthermore, "he wanted the officers to share something of the hardships and privations of the citizens. He would not have them gentlemen of leisure, walking about the streets, talking with their friends, &c., with plenty of money in their pockets. An honest man would perform the duties of Auditor as well for $300 as $1000. If he was not honest we did not want him."

Mr. Bissell favored a reduction. "He did not want to support government officers at high salaries, to ride about in their coaches and sport gold spectacles... He did not want them paid for giving wine parties, and electioneering the Legislature.

They should walk from their residences to their offices, as other citizens."

And so the salary of Auditor was fixed at $500. What wonder that Mr. Hempstead "felt disposed to make a motion that no gentleman or man of respectability should be appointed to any office under the Government of the State of Iowa."

From the fragments of the debates which were chronicled in the newspapers of the Capital, it is clear that the Convention of 1844, in providing for the exercise of executive power in Iowa, aimed (1) to make the Chief Magistracy a representative institution and (2) to limit the influence of the Governor in legislation.

The Committee on the Executive Department, of which the venerable Ex-Governor

Lucas was the chairman, reported in favor of vesting the supreme executive power in "a Governor, who shall hold his office for four years." A Lieutenant Governor "was to be chosen at the same time and for the same term." Furthermore, section five of the report provided that "no person shall be eligible to the office of Governor or Lieutenant Governor more than eight years in any term of twelve."

Mr. Chapman made a motion to strike out the provisions relative to a Lieutenant Governor, "which motion he enforced upon the principle of economy, and the non-necessity of the office." But the Convention refused to take a step so radical.

Mr. Langworthy moved to strike out *four* and insert *two* "as the term for which the Governor should hold his of-

fice." This was "to test whether any officer in the State of Iowa was to hold his office more than two years." Mr. Langworthy "wanted the whole government to be changed once in two years." His motion prevailed.

On the motion of Mr. Peck section five of the report, which aimed to prevent the Governor and Lieutenant Governor from succeeding themselves in office more than once in twelve years, was stricken out.

The question of an executive veto on legislation naturally received considerable attention, since the administration of Lucas was still fresh in the minds of many members of the Convention.

The Committee on the Legislative Department had reported a form of executive veto which was so limited that it could be

passed over by an ordinary majority in the two branches of the General Assembly. Mr. Peck favored a two-thirds majority of the members present.

But Mr. Hall moved to strike out the whole section and said that "in making this Constitution he wished to throw off the trammels of fashion and precedent. He had so pledged himself to his constituents. This veto power was a trammel, and an unncessary restraint on the freedom of legislation. The law of progress required that it should be abolished."

Mr. Bailey "thought the veto power was a valuable one; it was the people's power.....The Governor was more the representative of the people, than the Representatives themselves. The Representatives were chosen by sections, and repre-

sented local interests, and they might continue to pass bad laws. But the Governor had no local feelings."

Mr. Peck said that "the veto power was a qualified negative to prevent hasty and ill-advised legislation." He declared that the executive veto was a wholesome remedy for over-legislation. "It was a Democratic feature of any Constitution."

Ex-Governor Lucas took part in the discussion. "We were," he said, "engaged in making a Constitution to protect the rights of the people. The veto was one of the instruments that had been used to defend the people's rights. . . It might have been exercised imprudently at times, but that was not a good argument against the power."

Mr. Hall discussed the question at length. "Gentlemen," he said, "sup-

posed that the Legislature might be corrupt—he would suppose on the other hand, that the Governor might be corrupt, and his supposition was as good as theirs. Some gentlemen were afraid of the tyranny of the representatives—he would suppose that the Governor would be the tyrant; or he would suppose that the Governor would combine with the Legislature, and they would all be corrupt and tyrannical together. A number of persons were not so liable to corruption and combination as a single individual; — just as numbers increased the probability of corruption decreased." He declared that "there was no need of the power in this Territory."

The Convention finally agreed upon the form of the limited executive veto as provided for in the Federal Constitution.

Not even the Judiciary was spared from the influence of Western Democracy as it rose up and asserted itself in the Convention of 1844. The day of executive appointment and life tenure of judges had passed or was passing. The Committee on the Judiciary recommended that "the Judges of the Supreme Court and District Court shall be elected by the joint vote of the Senate and House of Representatives and hold their offices for six years;" but a minority report, introduced by Mr. Fletcher, proposed that all of the judges be elected by the qualified voters of the State.

In discussing this question the Convention desired to follow the wishes of the people; but it was not known that the people themselves really desired to elect

the Judges. On the other hand there is no evidence that anyone favored executive appointment. So the question before the Convention was: Shall the Judges be elected by the people or shall they be chosen by the General Assembly?

Mr. Hempstead favored direct election by the people on the assumption "that in a Republican or Democratic government the people were sovereign, and all power resided in them." He did not believe that the influence of politics would be worse in the election of Judges by the people than in the election of members of the General Assembly. "Joint ballot," he declared, "was one of the most corrupt methods of election ever devised."

Mr. Bailey did not doubt "the capacity of the people to elect their Judges;" but

he thought that "there was real danger in the Judges becoming corrupt through political influences. They were liable to form partialities and prejudices in the canvass, that would operate on the bench." He had "no objection to the people electing the Judges; but he did not think they desired the election — they had never asked to have it."

Ex-Governor Lucas said "the question would seem to be, whether there was any officer in the government whose duties were so sacred that they could not be elected by the people. All officers were servants of the people, from the President down." He repudiated the idea that the people were not capable of electing their own servants.

Mr. Quinton supported the proposition

to elect the Judges, since "this was said to be an age of progress." In his opinion "the ends of Justice would be better served by elections by the people than by the Legislature."

Mr. Kirkpatrick declared that the selection of Judges by the General Assembly was "wrong both in principle and in policy." He was opposed to "voting by proxy." He believed that "we should choose our Judges ourselves and bring them often to the ballot box."

Mr. Fletcher "came pledged to go for the election of Judges by the people." He believed that "the surest guaranty, which could be had for the fidelity and good conduct of all public officers, was to make them directly responsible to the people."

The outcome of the discussion was a compromise. The Judges of the Supreme Court were to be named by the General Assembly; but the Judges of the District Court were to be elected by the people.

That the pioneers of Iowa, including the members of the Convention of 1844, were Democratic in their ideals is certain. They believed in Equality. They had faith in Jeffersonianism. They clung to the dogmas of the Declaration of Independence. They were sure that all men were born equal, and that government to be just must be instituted by and with the consent of the governed. Such was their professed philosophy. Was it universally applicable? Or did the system have limitations? Did the Declaration of Independence, for example, include negroes?

The attitude of the Convention on this perplexing problem was perhaps fairly represented in the report of a Select Committee to whom had been referred "a petition of sundry citizens praying for the admission of people of color on the same footing as white citizens." This same Committee had also been instructed to inquire into the propriety of a Constitutional provision prohibiting persons of color from settling within the State.

In the opening paragraph of their remarkable report the Committee freely admitted (1) "that all men are created equal, and are endowed by their Creator with inalienable rights," and (2) that these rights are "as sacred to the black man as the white man, and should be so regarded." At the same time they looked

upon this declaration as "a mere abstract proposition" which, "although strictly true when applied to man in a state of nature, ... becomes very much modified when man is considered in the artificial state in which government and society place him."

The Committee then argued that "government is an institution or an association entered into by man, the very constitution of which changes or modifies to a greater or less extent his natural rights. Some are surrendered others are modified.... In forming or maintaining a government it is the privilege and duty of those who are about to associate together for that purpose to modify and limit the rights or wholly exclude from the association any and every species of persons who would

endanger, lessen or in the least impair the enjoyment of these rights. We have seen that the application of this principle limits the rights of our sons, modifies the privileges of our wives and daughters, and would not be unjust if it excluded the negro altogether. — 'Tis the party to the compact that should complain, not the stranger. Even hospitality does not sanction complaint under such circumstances. True, these persons may be unfortunate, but the government is not unjust.''

Thus the problem of negro citizenship was not one of abstract right, but must be settled on grounds of expediency. "Would the admission of the negro as a citizen tend in the least to lessen, endanger or impair the enjoyment of our governmental institutions?" The answer of the Committee reads as follows:

"However your committee may commiserate with the degraded condition of the negro, and feel for his fate, yet they can never consent to open the doors of our beautiful State and invite him to settle our lands. The policy of other States would drive the whole black population of the Union upon us. The ballot box would fall into their hands and a train of evils would follow that in the opinion of your committee would be incalculable. The rights of persons would be less secure, and private property materially impaired. The injustice to the white population would be beyond computation. There are strong reasons to induce the belief that the two races could not exist in the same government upon an equality without discord and violence, that might eventuate in insurrec-

tion, bloodshed and final extermination of one of the two races. No one can doubt that a degraded prostitution of moral feeling would ensue, a tendency to amalgamate the two races would be superinduced, a degraded and reckless population would follow; idleness, crime and misery would come in their train, and government itself fall into anarchy or despotism. Having these views of the subject your committee think it inexpedient to grant the prayer of the petition."

Nor was it thought expedient by the Committee to introduce an article into the Constitution which would exclude altogether persons of color from the State, notwithstanding the fact that "the people of Iowa did not want negroes swarming among them." Even Mr. Langworthy,

who had been instructed by his constituents "to get something put into the Constitution by which negroes might be excluded from the State," felt that the matter could safely be left with the General Assembly. Mr. Grant thought that an exclusion clause in the Constitution would "endanger our admission into the Union."

Although the report was laid on the table, it nevertheless represented the dominant opinion then prevalent in Iowa. Our pioneer forefathers believed that the negroes were men entitled to freedom and civil liberty. But more than a score of years had yet to elapse before there was in their minds no longer "a doubt that all men [including the negroes] are created free and equal."

When the delegates were elected to the Convention of 1844 the people of the Territory were still suffering from the effects of over-speculation, panic, and general economic depression. Many of them still felt the sting of recent bank failures and the evils of a depreciated currency. Hence it is not surprising to learn from the debates that not a few of the delegates came to the Convention instructed to oppose all propositions which in any way favored corporations, especially banking corporations.

The opposition to banks and bank money was not local; it was National. The bank problem had become a leading party issue. Democrats opposed and Whigs generally favored the banks. It was so in Iowa, where the agitation was

enlivened by the presence of the "Miners' Bank of Du Buque." This institution, which was established in 1836 by an act of Congress, had been the local storm center of the bank question. Prior to 1844 it had been investigated four times by the Legislative Assembly of the Territory.

In the Convention a minority as well as a majority report was submitted from the Committee on Incorporations. The majority report provided: (1) that one bank may be established with branches, not to exceed one for every six counties; (2) that the bill establishing such bank and branches must be (a) passed by a majority of the members elected to both houses of the General Assembly, (b) approved by the Governor, and (c) submitted to the

people for their approval or rejection; (3) that "such bank or branches shall not have power to issue any bank note or bill of a less denomination than ten dollars;" (4) that "the stockholders shall be liable respectively, for the debts of said bank, and branches;" and (5) that "the Legislative Assembly shall have power to alter, amend, or repeal such charter, whenever in their opinion the public good may require it."

The same majority report provided further: (1) that "the assent of two-thirds of the members elected to each house of the Legislature shall be requisite to the passage of every law for granting, continuing, altering, amending or renewing any act of Incorporation;" (2) that no act of incorporation shall continue in force for more

than twenty years; (3) that the personal and real property of the individual members of a corporation shall be liable for the debts of such corporation; and (4) that "the Legislative Assembly shall have power to repeal all acts of incorporation by them granted."

The minority report, which was signed by two members of the Committee, provided that "no bank or banking corporation of discount, or circulation, shall ever be established in this State."

In the discussion that followed the introduction of these reports the Whig members of the Convention were inclined to keep restrictions out of the Constitution and leave the whole question of establishing banks to the General Assembly. The Democrats were not united. The more

radical supported the minority report; others favored the establishment of banks well guarded with restrictions.

Mr. Hempstead said that he was opposed to all banks as a matter of principle. He pointed out that there were three kinds of banks — banks of deposit, banks of discount, and banks of circulation. "To this last kind he objected. They were founded in wrong, and founded in error." He declared that such corporations should be excluded altogether from the State. Indeed, he said that "if the whole concern — banks, officers and all — could be sent to the penitentiary he would be very glad of it."

Mr. Quinton thought that "the whole concern of Banks, from big A down, were a set of swindling machines, and now was

the time for the people of Iowa to give an eternal quietus to the whole concern."

Mr. Ripley declared that "Banks had always been a curse to the country.... He believed Banks to be unconstitutional, and oppressive upon the laboring classes of the community."

Mr. Bailey was an anti-Bank man; "but he knew many Democrats who were in favor of Banks under proper restrictions."

Mr. Hall said that "Banking was a spoiled child; it had been nursed and petted till it had become corrupt." He objected to banking "because it conferred privileges upon one class that other classes did not enjoy." He believed that the people would find that "a bank of earth is the best bank, and the best share a ploughshare."

Mr. Gehon wanted to put his "feet upon the neck of this common enemy of mankind."

Ex-Governor Lucas, who represented the conservative Democrats, said that this was not a party issue but rather a question of expediency. He was in favor of leaving it to the Legislature and the people.

Mr. Lowe said that "the truth was, this matter, like all other questions of internal policy, should be left where all the other States of the Union have left it, to the sovereign will of a free and independent people."

Mr. Hawkins said that "the Whigs were in favor of leaving this matter to the action of future Legislatures and to the people. When a proposition was made for a charter, let the details be decided by them with all the lights before them at that time."

As finally agreed to in the Convention, article nine of the Constitution, which dealt with corporations, contained the following provisions. First, no act of incorporation shall continue in force for more than twenty years without being re-enacted by the General Assembly. Secondly, the personal and real property of the members of a corporation shall at all times be liable for the debts of such corporation. Thirdly, the General Assembly "shall create no bank or banking institution, or corporation with banking privileges" without submitting the charter to a vote of the people. Fourthly, the General Assembly shall have power to repeal all acts of incorporation by them granted. Fifthly, the property of the inhabitants of the State shall never be used by any incorpor-

ated company without the consent of the owner. Sixthly, the State shall not become a stockholder in any bank or other corporation. In this form the question of banks and corporations was submitted to the people.

On Friday morning, November the first, the Constitutional Convention of 1844 adjourned *sine die* after a session of just twenty-six days.

XI

THE CONSTITUTION OF 1844

The Constitution of 1844 as submitted by the Convention to Congress and to the people of the Territory of Iowa contained thirteen articles, one hundred and eight sections, and over six thousand words.

Article I. on "Preamble and Boundaries" acknowledges dependence upon "the Supreme Ruler of the Universe" and purports to "establish a free and independent government" in order "to establish justice, ensure tranquility, provide for the common defense, promote the general welfare, secure to ourselves and our posterity, the rights of life, liberty, and the pursuit of happiness."

Article II. as the "Bill of Rights" declares that "all men are by nature free and independent, and have certain unalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety and happiness." All political power is "inherent in the people;" for their "protection, security, and benefit" government is instituted; and they, the people, have "the right at all times, to alter, or reform the same, whenever the public good may require it."

Following these classic political dogmas of the American Revolution is a rather exhaustive enumeration of the fundamental rights of the individual, which at various times and in various ways had found ex-

pression in the state papers and Constitutions of England and America, and which together constitute the domain of Anglo-Saxon liberty and freedom.

Article III. defines the "Right of Suffrage" by limiting the exercise thereof to white male citizens of the United States, of the age of twenty-one years, who shall have been residents of the State six months next preceding the election, and of the county in which they claim a vote thirty days.

Article IV. proclaims the theory of the separation of powers in sweeping terms, and prescribes the constitution of the law-making department. Herein the legislative authority was vested in a General Assembly, which was organized on the bicameral plan. The members of the

House of Representatives were to be chosen for two years, those of the Senate for four years. The regular sessions of the General Assembly were to be held biennially.

Article V. on the "Executive Department" provides that the "Supreme Executive power shall be vested in a Governor, who shall hold his office for two years; and that a Lieutenant Governor shall be chosen at the same time and for the same term." The Governor must be a citizen of the United States and have attained the age of thirty years.

Article VI. organizes the "Judicial Department." It provides for a Supreme Court consisting of "a Chief Justice and two Associates," to be chosen by the General Assembly for a term of four years. The District Court was to "consist of a

Judge, who shall reside in the district assigned him by law," and be elected by the people for the same term as the Judges of the Supreme Court.

Article VII. provides that the "Militia" shall be composed of "all able bodied white male persons between the ages of eighteen and forty-five years," except such persons as are or may be especially exempted by law. All details relative to organizing, equipping, and disciplining the militia were left to the General Assembly.

Article VIII. on "Public Debts and Liabilities" prohibited the General Assembly from contracting debts and obligations which in the aggregate would exceed one hundred thousand dollars.

Article IX. placed restrictions upon banking and other business corporations.

Article X. deals with "Education and School Lands." It provides for a "Superintendent of Public Instruction" who shall be chosen by the General Assembly. It directs the General Assembly to provide for a system of common schools. It declares also that the General Assembly "shall encourage, by all suitable means, the promotion of intellectual, scientific, moral and agricultural improvement."

Article XI. outlines a system of local government which includes both the county and the township organization. The details are left to the General Assembly.

Article XII. provides for "Amendments to the Constitution." In the case of partial revision of the Constitution, the specific amendment must be passed by two successive General Assemblies and ratified by

the people. When it is desired to have a total revision of the fundamental law, the General Assembly submits the question of a Constitutional Convention to a direct vote of the people.

Article XIII. provides a "Schedule" for the transition from the Territorial to the State organization.

From the view-point of subsequent events the most significant provision of the Constitution of 1844 was the one which defined the boundaries of the future State. There is, however, no evidence that the members of the Convention foresaw the probability of a dispute with Congress on this point, although Governor Chambers in his message of December, 1843, had pointed out its possibility should the people of Iowa

assume to give boundaries to the State without first making application to Congress for definite limits. It was on the question of boundaries that the Constitution of 1844 was wrecked.

In the Convention the regular standing Committee on State Boundaries reported in favor of certain lines which were in substance the boundaries recommended by Governor Lucas in his message of November, 1839. Indeed, it is altogether probable that the recommendations of Robert Lucas were made the basis of the Committee's report. This inference is strengthened by the fact that the illustrious Ex-Governor was a member of the Committee. It will be convenient to refer to the boundaries recommended by the Committee as the *Lucas boundaries*.

The Lucas boundaries were based upon the topography of the country as determined by rivers. On the East was the great Mississippi, on the West the Missouri, and on the North the St. Peters. These natural boundaries were to be connected and made continuous by the artificial lines of the surveyor. As to the proposed Eastern boundary there could be no difference of opinion; and it was generally felt that the Missouri river should determine the Western limit.

On the South the boundary must necessarily be the Northern line of the State of Missouri. But the exact location of this line had not been authoritatively determined. During the administration of Lucas it was the subject of a heated controversy between Missouri and Iowa which at one

time bordered on armed hostility. The purpose of the Convention in 1844 was not to settle the dispute but to refer to the line in a way which would neither prejudice nor compromise the claims of Iowa.

The discussion of the Northern boundary was, in the light of subsequent events, more significant. As proposed by the Committee the line was perhaps a little vague and indefinite since the exact location of certain rivers named was not positively known. Some thought that the boundary proposed would make the State too large. Others thought that it would make the State too small. Mr. Hall proposed the parallel of forty-two and one-half degrees of North latitude. Mr. Peck suggested the parallel of forty-four. Mr. Langworthy, of Dubuque, asked that

forty-five degrees be made the Northern limit.

Mr. Langworthy's proposition met with considerable favor among the people living in the Northern part of the Territory who desired to increase the size of the State by including a considerable tract North of the St. Peters. Mr. Chapman suggests the existence of sectional feeling in the matter of boundaries when he says, in reply to Mr. Langworthy's argument, that "it was a kind of creeping up on the North which was not good faith to the South."

On October 14 the report of the regular Committee on State Boundaries was referred to a Select Committee consisting of representatives from the twelve electoral districts. But this Committee made no changes in the original report except to

make the Northern boundary a little more definite.

As finally adopted by the Convention and incorporated into the Constitution of 1844, the boundaries of the State were as follows: "Beginning in the middle of the main channel of the Mississippi river opposite the mouth of the Des Moines river; thence up the said river Des Moines, in the middle of the main channel thereof, to a point where it is intersected by the Old Indian Boundary line, or line run by John C. Sullivan in the year 1816; thence westwardly along said line to the 'Old Northwest corner of Missouri;' thence due west to the middle of the main channel of the Missouri river; thence up in the middle of the main channel of the river last mentioned to the mouth of the Sioux or Calumet

river; thence in a direct line to the middle of the main channel of the St. Peters river, where the Watonwan river (according to Nicollet's map) enters the same; thence down the middle of the main channel of said river to the middle of the main channel of the Mississippi river; thence down the middle of the main channel of said river to the place of beginning."

In accordance with the act of the Legislative Assembly of February 12, 1844, and section six of the "Schedule" it was provided that the new Constitution, "together with whatever conditions may be made to the same by Congress, shall be ratified or rejected by a vote of the qualified electors of this Territory at the Township elections in April next." And the General Assembly of the State was authorized to "ratify

or reject any conditions Congress may make to this Constitution after the first Monday in April next."

At the same time it was made the duty of the President of the Convention to transmit a copy of the Constitution, along with other documents thereto pertaining, to the Iowa Delegate at Washington, to be by him presented to Congress as a request for the admission of Iowa into the Union. For such admission at an early day the Convention, as memorialists for the people of the Territory, confidently relied upon "the guarantee in the third article of the treaty between the United States and France" of the year 1803.

It now remained for Congress and the people of the Territory to pass judgment upon the Constitution of 1844.

XII

THE CONSTITUTION OF 1844 SUBMITTED TO CONGRESS

The second session of the Twenty-Eighth Congress opened on Monday, December 2, 1844. On December 9, Senator Tappan presented to the Senate the Constitution which had been framed by the Iowa Convention of 1844. It was referred at once to the Committee on the Judiciary. Three days later Augustus C. Dodge, Delegate from the Territory of Iowa, laid before the House of Representatives a copy of the same instrument together with an ordinance and a memorial from the Iowa Convention. Here the documents were referred to the Committee on Territories.

On January 7, 1845, through Mr. Aaron V. Brown, the Committee on Territories reported a bill for the admission of Iowa and Florida into the Union. This bill was read twice and referred to the Committee of the Whole House on the State of the Union, wherein it was considered on the three days of February 10, 11, and 13. It passed the House of Representatives on February 13, 1844, by a vote of one hundred and forty-four to forty-eight.

The day after its passage in the House of Representatives the bill was reported to the Senate. Here it was referred to the Committee on the Judiciary, from which it was reported back to the Senate without amendment on February 24. The Senate considered the measure on March 1, and passed the same without alteration by a

vote of thirty-six to nine. On March 3, 1845, the act received the signature of President Tyler.

The debate on the bill for the admission of Iowa under the Constitution of 1844 is of more than local interest since it involved a consideration of the great question of National Politics in its relation to the growth of the West and the admission of new States.

When Iowa applied for State organization in 1844, Florida had been waiting and pleading for admission ever since the year 1838. The reason for this delay was very generally understood and openly avowed. States should be admitted not singly but in pairs. Florida was waiting for a companion. And so in 1844 it fell to Iowa to be paired with the peninsula. The

principle involved was not new; but never before had two States been coupled in the same act of admission. The object sought was plainly the maintenance of a *balance of power* between the North and the South.

But back of the principle of the balance of power, and for the preservation of which that principle was invoked, stood Slavery. The institution of free labor in the North must be balanced by the institution of slave labor in the South, since both must be preserved. And so the admission of Iowa and Florida had to be determined in reference to this all-devouring question of National Politics.

Upon examination it was found that the proposed Constitution of Florida not only sanctioned the institution of Slavery, but it positively guaranteed its perpetuation

by restraining the General Assembly from ever passing laws under which slaves might be emancipated. On the other hand the Constitution of Iowa, although it did not extend the privilege of suffrage to persons of color, provided that "neither slavery nor involuntary servitude, unless for the punishment of crimes, shall ever be tolerated in this State."

Now it so happened that the opposing forces of slave labor and free labor, of "State Rights" and "Union," came to an issue over the boundaries of the proposed State of Iowa. In the bill for admission, as reported by the House Committee on Territories, the boundaries asked for by the Iowa Convention in the Constitution submitted by them were retained without alteration. But Mr. Duncan, of Ohio, had

other limits to propose. He would have the new State of Iowa "bounded by the Mississippi on the East, by a parallel of latitude passing through the mouth of the Mankato, or Blue Earth river, on the North, by a meridian line running equidistant from the seventeenth and eighteenth degrees of longitude West from Washington on the West, and by the Northern boundary of the Missouri on the South." Mr. Duncan pointed out that these were the boundaries proposed by Nicollet in the report which accompanied the publication in January, 1845, of his map of the basin of the upper Mississippi. He preferred the *Nicollet boundaries* because (1) they were "the boundaries of nature" and (2) at the same time they left sufficient territory for the formation of two other States in that Western country.

On the other hand, Mr. Brown, Chairman of the Committee on Territories, said that the question of boundaries had been carefully investigated by his Committee, "and the conclusion to which they had come was to adhere to the boundary asked for by the people of Iowa, who were there, who had settled the country, and whose voice should be listened to in the matter."

Mr. Belser, of Alabama, was opposed to the Duncan amendment since it "aimed to admit as a State only a portion of Iowa at this time. This he would have no objection to, provided Florida is treated in the same way. He was for receiving both into the Confederacy, with like terms and restrictions. If Iowa is to come in without dismemberment, then let Florida enter in like manner; but if Iowa is divided, then let Florida be divided also."

Mr. Vinton, of Ohio, was the most vigorous champion of the Duncan amendment. He stood out firmly for a reduction of the boundaries proposed by the Iowa Convention because the country to the North and West of the new State, "from which two other States ought to be formed," would be left in a very inconvenient shape, and because the formation of such large States would deprive the West of "its due share of power in the Senate of the United States."

Mr. Vinton was "particularly anxious that a State of unsuitable extent should not be made in that part of the Western country, in consequence of the unwise and mistaken policy towards that section of the Union which has hitherto prevailed in forming Western States, by which the great

valley of the Mississippi has been deprived, and irrevocably so, of its due share in the legislation of the country." As an equitable compensation to the West for this injustice he would make "a series of small States" on the West bank of the Mississippi.

Furthermore, Mr. Vinton did not think it politic to curtail the power of the West in the Senate of the United States by the establishment of large States, since in his opinion "the power of controlling this government in all its departments may be more safely intrusted to the West than in any other hands." The commercial interests of the people of the West were such as to make them desirous of protecting the capital and labor both of the North and the South.

Again, he declared that if disunion should ever be attempted "the West must and will rally to a man under the flag of the Union." "To preserve this Union, to make its existence immortal, is the high destiny assigned by Providence itself to this great central power."

The arguments for restriction prevailed, and the Duncan amendment, which proposed to substitute the *Nicollet boundaries* for the *Lucas boundaries*, passed the House of Representatives by a vote of ninety-one to forty.

In the Senate the bill as reported from the House was hurried through without much debate. Here the question of boundaries seems to have received no consideration whatever. There were, however, strong objections in some quarters to

coupling Iowa with Florida in the matter of admission.

Senator Choate, of Massachusetts, called attention to the fact that this was the first instance in the history of the admission of States where it was proposed to admit two States by the same act. Under the circumstances he could welcome Iowa into the Union, but he could not give his hand to Florida. It could not be argued that Florida must be admitted to balance Iowa, since the admission of Texas was already more than a balance for the northern State. However appropriate it might have been at an earlier day to pair Florida with Iowa, it ought not to be thought of at this time. For, since the introduction of the bill, "we have admitted a territory on the southwest much larger than Iowa and

Florida together — a territory that may be cut up into forty States larger than our small States, or five or six States as large as our largest States. Where and how is the balance to be found by the North and East for Texas? Where is it to be found but in the steadfast part of America? If not there, it can be found nowhere else. God grant it may be there! Everything has been changed. An empire in one region of the country has been added to the Union. Look east, west, or north, and you can find no balance for that."

Senator Evans touched upon the great issue when he proposed an amendment which provided that so far as Florida was concerned the bill should not take effect until the people had removed from their Constitution certain restrictions on the

General Assembly relative to the emancipation of slaves and the emigration and immigration of free negroes or other persons of color. He was opposed to discriminations against free persons of color. Why, then, retorted a Senator from the South, do you not direct your artillery against the Constitution of Iowa which does not allow a colored person to vote?

No good reason had been urged showing why Iowa should not be admitted into the Union. All of the essential qualifications for statehood were present—a large and homogeneous population, wealth, *morale*, and republican political institutions. Congress did not pass an adverse judgment on the Constitution of 1844, since that instrument provided for a government which was

Republican in form and satisfactory in minor details. Only one change was demanded, and that was in relation to the proposed boundaries. Here Congress insisted upon the *Nicollet boundaries* as incorporated in the act of admission of March 3rd, 1845, in opposition to the *Lucas boundaries* as provided for in the Constitution of 1844.

XIII

THE CONSTITUTION OF 1844 DEBATED AND DEFEATED BY THE PEOPLE

While Congress was discussing the boundaries of Iowa and carefully considering the effect which the admission of the new State might possibly have upon matters of National concern, the Constitution of 1844 was being subjected to analysis and criticism throughout the Territory. Moreover, it is interesting to note that the only provision of the Constitution which was held up and debated in Congress was the very one which was generally accepted by the people of the Territory without comment. Whigs and Democrats alike were satisfied with the *Lucas boundaries*. Nor did the

people of Iowa at this time think or care anything about the preservation of the "balance of power." Their adoption of, and adherence to, the *Lucas boundaries* was founded upon local pride and commercial considerations.

Opposition to the Constitution of 1844 was at the outset largely a matter of partisan feeling. The Whigs very naturally opposed the ratification of a code of fundamental law which had been formulated by a Democratic majority. Then, too, they could not hope for many of the Federal and State offices which would be opened to Iowans after the establishment of Commonwealth organization. And so with genuine partisan zeal they attacked the instrument from Preamble to Schedule. Nothing escaped their ridicule and sar-

casm. By the Democratic press they were charged with "an intent to keep Iowa out of the Union, so that her two Senators shall not ensure the vote of the United States Senate to Mr. Polk at the next session."

But the Whigs were not altogether alone in their opposition to the proposed Constitution, not even during the early weeks of the campaign. There was some disaffection among the Democrats themselves, that is, among the radicals who thought that the new code was not sufficiently Jeffersonian. The editor of the *Dubuque Express*, for example, was severe in his criticisms, but he intimated that he would vote for the Constitution in the interests of party discipline. The *Bloomington Herald*, on the other hand, although a strong

organ of the Democracy, emphatically declared through its editorial columns that "admission under the Constitution would be a curse to us as a people."

As a party, however, the Democrats favored the Constitution of 1844, defended its provisions, and urged its adoption by the people. They held that as a code of fundamental law it was all that could be expected or desired, and with a zeal that equaled in every way the partisan efforts of the Whigs they labored for its ratification at the polls.

An examination of the arguments as set forth in the Territorial press reveals two classes of citizens who opposed ratification. First, there were those who were hostile to the Constitution because they did not want State government. Secondly, there were

others who could not subscribe to the provisions and principles of the instrument itself.

The out-and-out opponents of State government continued to reiterate the old argument of "Economy." They would vote against the Constitution in order to prevent an increase in the burdens of taxation. This argument of itself could not possibly have defeated ratification, since there was at this time an overwhelming majority who desired admission into the Union. And yet the plea of economy (which always appealed strongly to the pioneers) undoubtedly contributed somewhat to the defeat and rejection of the Constitution of 1844.

Prior to the first of March, 1845, opposition to ratification was expressed chiefly

in objections to the proposed Constitution. As a whole that instrument was characterized as "deficient in style, manner, and matter, and far behind the spirit of this enlightened age." It could not even be called a code of fundamental law, since it contained legislative as well as Constitutional provisions. It confounded statute law with Constitutional law.

In its detailed provisions and clauses the Constitution of 1844 was still less satisfactory to the opponents of ratification. They seemed to see everywhere running through the whole instrument erroneous principles, inexpedient provisions, and confused, inconsistent, and bungling language. They declared that the legislative, executive, and judicial departments of the government were not sufficiently separate and distinct.

The principle of the separation of powers was clearly violated (1) by giving to the Executive the power of veto, and (2) by allowing the Lieutenant Governor to participate in the debates of the Senate. Nor were the popular powers — namely, the powers of sovereignty — always differentiated from the delegated powers — or, the powers of government.

The Constitution was roundly abused because it provided for the election of the Judges of the inferior courts by the people. To the minds of the critics the office of Judge was too sacred to be dragged into partisan politics and through corrupting campaigns. Judges ought not to be responsible to the people, but solely to their own consciences and to God. Likewise, it was contrary to the principles of efficient

and harmonious administration to provide for the popular election of the Secretary of State, Auditor of Public Accounts, and Treasurer. Such positions should be filled by executive appointment.

Again, the Constitution was attacked because it provided for biennial instead of annual elections. The salaries fixed for State officers were "niggardly and insufficient." The method prescribed for amending the Constitution was altogether too tedious and too uncertain. The provisions relative to corporations were too narrow, since they restrained the General Assembly from providing for internal improvements. By requiring all charters of banks and banking institutions to be submitted to a direct vote of the people, the Constitution practically prevented the organization and establishment of such institutions.

Finally, objections were made to that section of the Bill of Rights which provided that no evidence in any court of law or equity should be excluded in consequence of the religious opinions of the witness. To some it was horrifying to think of admitting the testimony of non-believers and Atheists.

Such were the arguments against ratification which were advanced by the opponents of the Constitution of 1844. However, that instrument was not so defective as pictured, since back of all objections and all opposition was the mainspring of partisan politics. The Whigs were bent on frustrating the program of the Democrats. Were they able to defeat the Constitution on the issue of its imperfections? No, not even with the assistance of the radical

Democrats! But fortunately for the cause of the opposition a new and powerful objection to ratification appeared in the closing weeks of the campaign. The news that Congress had, by the act of March 3, 1844, rejected the boundaries prescribed by the Iowa Convention reached the Territory just in time to determine the fate of the Constitution of 1844.

A close examination of this act of Congress revealed the fact that the fourth section thereof conditioned the admission of Iowa upon the acceptance of the *Nicollet boundaries* "by a majority of the qualified electors at their township elections, in the manner and at the time prescribed in the sixth section of the thirteenth article of the constitution adopted at Iowa City the first day of November, anno Domini eighteen

hundred and forty-four, or by the Legislature of said State." Moreover, it was found that the provisions of the Constitution of 1844 just quoted read as follows: "This constitution, together with whatever conditions may be made to the same by Congress, shall be ratified or rejected by a vote of the qualified electors of this Territory at the township elections in April next, in the manner prescribed by the act of the Legislative Assembly providing for the holding of this Convention: *Provided, however*, that the General Assembly of this State may ratify or reject any conditions Congress may make to this Constitution after the first Monday of April next."

In the light of these provisions it appeared to the people of Iowa that a vote cast for the Constitution would be a vote

for the Constitution as modified by the act of Congress. This view was altogether plausible since no provision had been made for a separate ballot on the conditions imposed by Congress. And so it was thought that a ratification of the Constitution would carry with it an acceptance of the *Nicollet boundaries*, while a rejection of the Constitution would imply a decided stand in favor of the *Lucas boundaries*.

Those who during the fall and winter had opposed ratification now renewed their opposition with augmented zeal. The Whigs turned from their petty attacks upon the provisions of the Constitution to denounce the conditions imposed by Congress. They declared that the Constitution must be defeated in order to reject the undesirable *Nicollet boundaries*.

The boundary question now led a considerable number of the more moderate Democrats to oppose ratification. Prominent leaders of the party took the stump and declared that it would be better to reject the Constitution altogether than to accept the limited boundaries proposed by Congress. They declared that the "natural boundaries" as prescribed by the Constitution should not be curtailed, and called upon all good Democrats to vote down their own Constitution. Many, however, continued to support ratification, believing that the boundaries imposed by the act of Congress were the best that could be obtained under the existing conditions. Augustus Dodge, the Iowa Delegate in Congress, took this stand.

When the Constitution of 1844 was be-

fore Congress Mr. Dodge had stood firmly for the boundaries as proposed in that instrument. But on the day after the act of March 3, 1845, had been signed by the President, he addressed a letter to his constituents in Iowa advising them to ratify the Constitution and accept the *Nicollet boundaries* as prescribed by Congress. Mr. Dodge thought that the State would still be large enough. He knew that the country along the Missouri river was fertile, but "the dividing ridge of the waters running into the Mississippi and Missouri rivers, called the 'Hills of the Prairie,' and which has been excluded from our new State, is barren and sterile." He called attention to the fact that the boundaries prescribed by Congress were those suggested by Mr. Nicollet, a United States Geologist, "who

had accurately and scientifically examined the whole country lying between the Mississippi and Missouri rivers." Then he pointed out the influences which operated in reducing the boundaries, and concluded by saying: "Forming my opinion from extensive inquiry and observation, I must in all candor inform you that, whatever your decision on the first Monday in April next may be, we will not be able hereafter under any circumstances to obtain *one square mile more* for our new State than is contained within the boundaries adopted by the act of Congress admitting Iowa into the Union."

From the returns of the election it was evident that Mr. Dodge's constituents either did not take him seriously or were sure that he was mistaken in his conclu-

sions. The Constitution of 1844 was rejected by a majority of 996 votes.

The result of the election was such as to "astound the friends of the Constitution and to surprise everybody, both friend and foe." Those who had labored for ratification throughout the campaign abused the Whigs for opposing so perfect an instrument, censured the Convention for submitting the Constitution to Congress before it had been ratified by the people, and preferred general charges of misrepresentation. The friends of the Constitution clamored loudly for a re-submission of the code of fundamental law as it had come from the Convention, so that the people might have an opportunity to pass upon it free from conditions and without misrepresentation. Within a few weeks the seventh Legislative

Assembly of the Territory was to meet in regular session. The members would be asked to give the Constitution of 1844 another chance.

XIV

THE CONSTITUTION OF 1844 REJECTED A SECOND TIME

On Monday the fifth day of May, 1845, the Legislative Assembly of the Territory met in regular session. Three days later a message from Governor Chambers was presented and read to the members, whereby they were informed that the vote in April had certainly resulted in the rejection of the Constitution. "And," continued the Governor, "there is reason to believe that the boundary offered us by Congress had much influence in producing that result."

Believing that the rejection of the Constitution by the people called for some

action on the part of the Assembly, Governor Chambers proposed and recommended "that the question be again submitted to the people, whether or not they will at this time have a Convention." But a majority of the Assembly were in favor of re-submitting the Constitution of 1844 as it had come from the hands of the Convention. A bill to re-submit was accordingly introduced and hurried through to its final passage.

A formal and solemn protest from the minority, signed by nine members and entered on the journal of the House of Representatives, set forth the leading objections to re-submission. 1. The Assembly had no delegated power to pass such a measure. 2. The act was designed to control rather than ascertain public senti-

ment. 3. The Constitution of 1844 had been *deliberately* rejected by the people. 4. No memorial indicating a change of opinion had been sent up by the people since the election. 5. In the April election the people had not been misled; they voted intelligently; and their ballots were cast against the Constitution itself. The conditions imposed by Congress "doubtless had influence in different sections of the Territory, both for and against it. What was lost on the North and South by the change, was practically made up by the vote of the center where the Congressional boundaries are more acceptable than those defined in the Constitution." 6. The question of territory being a "minor consideration," the Constitution was rejected principally on account of its inherent

defects. 7. Under no consideration should the Constitution of 1844 be again submitted to the people since it embodied so many objectionable provisions.

Although the bill for re-submission had passed both branches of the Assembly by a safe majority, Governor Chambers did not hesitate to withhold his assent. On June 6 he returned it to the Council. But it is difficult to ascertain the precise grounds upon which the Governor withheld his approval, since his message deals with conditions rather than objections. In the first place he reviewed the conditions under which the Constitution of 1844 had at the same time been submitted to Congress and to the people of the Territory. Then he pointed out that, whereas a poll was taken on the Constitution according to

law, no provision had been made for a separate poll on the conditions imposed by Congress. This, he thought, produced such confusion in the public mind as to cause the defeat of the Constitution. To be sure, he had proposed and was still in favor of submitting the question of a Convention to the people. But he would not now insist on such a policy. He freely admitted that the Legislative Assembly had the power to pass the measure before him. At the same time it seemed to him that, should the Constitution of 1844 be re-submitted to the people, it would simply give rise to confusion in attempts to reconcile and harmonize the various provisions of the statutes of the Territory, the act of Congress, and the Constitution.

In the face of the Governor's veto the

bill to re-submit the Constitution passed both branches of the Assembly by the requisite two-thirds majority, and on June 10, 1845, was declared by the Secretary of the Territory to be a law. It provided "that the Constitution as it came from the hands of the late Convention" be once more submitted to the people for their ratification or rejection. It directed that a poll be opened for that purpose at the general election to be held on the first Monday of August, 1845. The votes of the electors were to be given *viva voce.* Furthermore, it was expressly provided that the ratification of the Constitution "shall not be construed as an acceptance of the boundaries fixed by Congress in the late act of admission, and the admission shall not be deemed complete until what-

ever condition may be imposed by Congress, shall be ratified by the people."

Thus the people were again asked to pass upon the Constitution of 1844. The campaign of the summer of 1845 was very much like the campaign of the spring. All of the leading arguments both for and against the Constitution were repeated in the press and on the stump. The parties divided on the same lines as before, except that the Whigs in their opposition had the assistance of a much larger Democratic contingent.

One is surprised to find, in connection with the boundary question, little or no mention of "slavery," the "balance of power," or the "small State policy." Indeed the people of Iowa seemed wholly indifferent to these larger problems of

National Politics. It is perhaps the most remarkable fact in the fascinating history of the Constitution of 1844 that, in the dispute over boundaries, the parties did not join issue on common grounds. Congress, on the one hand, desired to curtail the boundaries of Iowa for the purpose of creating a greater number of Northern States to balance the slave States of the South; whereas the people of Iowa protested against such curtailment not because of any balance-of-power considerations, but simply because they wanted a large State which would embrace the fertile regions of the Missouri on the West and of the St. Peters on the North.

Augustus C. Dodge naturally received a good deal of criticism and abuse about this time on account of his March letter advis-

ing the acceptance of the boundaries proposed by Congress. By the Whigs he was set down as "a deserter of the people's cause." Even the Legislative Assembly, which was Democratic, resolved "that the Delegate in Congress be instructed to insist unconditionally on the Convention boundaries, and in no case to accept anything short of the St. Peters on the North, and the Missouri on the West, as the Northern and Western limits of the future State of Iowa." Mr. Dodge was not the man to oppose the known wishes of his constituents; and so, after June 10, 1845, he was found earnestly advocating the larger boundaries.

One of the most interesting phases of the campaign was a surprising revelation in regard to the attitude and ambitions of

the people living in the Northern part of the Territory—particularly the inhabitants of the city and county of Dubuque. In 1844 the people of this region had been in favor of extending the boundary as far North as the St. Peters; and in the Constitutional Convention of that year Mr. Langworthy, of Dubuque, had gone so far as to advocate the forty-fifth parallel of latitude as a line of division. But on April 26, 1845, the *Bloomington Herald* declared that a proposition had gone out from Dubuque to divide the Territory on the North by a line running due West from the Mississippi between the counties of Jackson and Clinton and townships eighty-three and eighty-four. Later it was said that the *Dubuque Transcript* was altogether serious in reference to this proposed division.

These charges were not without foundation; for the records of Congress show that in May, 1846, the Speaker of the House of Representatives "presented a memorial of the citizens of the Territory of Iowa north of the forty-second degree of north latitude, praying for the establishment of a new territorial government, extending from the Mississippi river between the parallel of forty-two degrees and the northern boundary line of the United States. Also a memorial of Thomas McKnight and others, citizens of Dubuque county, in said Territory of like import."

The official returns of the August election showed that the Constitution of 1844 had been rejected a second time. But the majority against its ratification had been cut down by at least one half. Angry

with disappointment the editor of the *Iowa Capital Reporter* declared that its defeat was due to "the pertinacious and wilful misrepresentation of the Whig press relative to the boundaries."

XV

THE CONVENTION OF 1846

When the members of the eighth Legislative Assembly of the Territory of Iowa met in the Capitol on the first Monday of December, 1845, they found that, as a result of the rejection of the Constitution of 1844, they were face to face with the question which for six years had confronted the pioneer law-makers of Iowa as the greatest political issue of the Territorial period. They found that the whole problem of State organization was before them for reconsideration.

It was found also that Politics had worked some changes in the government of

the Territory. John Chambers, who upon the completion of his first term as Governor had been promptly reappointed in 1844 by President Tyler, was as cheerfully removed by President Polk in 1845. And the Democracy of Iowa rejoiced over this manifestation of Jacksonianism. They believed that they would now have a Governor after their own heart—a Democrat who would have confidence in the people and respect the acts of their representatives. To be sure, the first Governor of the Territory of Iowa was a Democrat; but Robert Lucas had been altogether too independent. He had presumed to point out and correct the errors and blunders of the Assembly; whereas a true Democratic Governor was one who did not lead, but always followed the wisdom of the masses.

James Clarke, the new Governor, was a citizen of Burlington and editor of the *Territorial Gazette*. During his residence in the Territory he had always taken an active part in Politics. In 1844 he served as a Delegate in the Constitutional Convention. Before this he had acted as Territorial Librarian; and for a short time he filled the office of Secretary of the Territory.

Governor Clarke regretted the fate of the Constitution which he had helped to frame. In his message of December 3, 1845, he said: "Since your adjournment in June last, a most important question has been decided by the people, the effect of which is to throw us back where we originally commenced in our efforts to effect a change in the form of government

under which we at present live.—I allude to the rejection of the Constitution at the August election. This result, however brought about, in my judgment, is one greatly to be deplored.—That misrepresentation and mystification had much to do in effecting it, there can be no doubt; still it stands as the recorded judgment of the people; and to that judgment until the people themselves reverse the decree, it is our duty to submit."

As to recommendations in reference to this problem the Governor was cautious. He favored State organization, because he thought that "the prosperity of Iowa would be greatly advanced by her speedy incorporation into the Union as a State." But he did not presume to recommend a particular course of action; he simply as-

sured the Assembly of his hearty co-operation in any measure which might be enacted looking toward the accomplishment of the desired end, that is, the early admission of Iowa into the Union.

Confident that the people of Iowa really desired State organization and were anxious for its immediate establishment, the Legislative Assembly passed a bill providing for the election of delegates to a Constitutional Convention. This act, which was approved January 17, 1846, called for the election by the people of thirty-two delegates at the township elections in April. The delegates were directed to meet at Iowa City on the first Monday of May, 1846, "and proceed to form a Constitution and State Government for the future State of Iowa." When completed

the draft of the code of fundamental law was to be submitted to the people for ratification or rejection at the first general election thereafter. If ratified by the people it was then to be submitted to Congress with the request that Iowa be admitted into the Union "upon an equal footing with the original States." Thus the Legislative Assembly forestalled the possibility of a repetition of the blunder of submitting to Congress a Constitution before it had been passed upon by the people. There was no serious opposition to the course outlined by the Assembly, for a large majority of the people were now anxious to see the matter of State organization carried to a successful conclusion.

Owing to the absence of vital issues,

the canvass preceding the election of delegates was not what would be called an enthusiastic campaign. There was of course a party struggle between the Whigs and the Democrats for the seats in the Convention. But the Whigs, "aware of their hopeless minority," advocated a "non-partisan election." They clamored for a "no-party Constitution,"—one free from party principles—for they did not want to see the Constitution of the State of Iowa made the reservoir of party creeds. They contended, therefore, that the delegates to the Convention should be chosen without reference to party affiliations.

The Democrats, however, were not misled by the seductive cry of the Whigs. They proceeded to capture as many seats as possible. Everywhere they instructed

their candidates to vote against banks. When the returns were all in it was found that they had elected more than two-thirds of the whole number of delegates.

Of the thirty-two delegates who were elected to seats in the Convention of 1846, ten were Whigs and twenty-two were Democrats. Fifteen of the members were born in the South, eight in the New England States, four in the Middle States, and five in Ohio. Of those born in the South six were from Kentucky, four from Virginia, three from North Carolina, one from Alabama, and one from Maryland. The eight members born in New England were four from Vermont and four from Connecticut. The oldest member of the Convention was sixty-seven, the youngest twenty three; while the average age of all

was about thirty-seven years. As to occupation, there were thirteen farmers, seven lawyers, four merchants, four physicians, one mechanic, one plasterer, one smelter, and one trader.

It was on the morning of May 4, 1846, that the second Constitutional Convention met in the rooms of the Old Stone Capitol at Iowa City. Thirty names were entered on the roll. James Grant, a delegate from Scott county who had served in the first Convention, called the members to order. William Thompson (not a member) was appointed Secretary *pro tem.* Such was the temporary organization. It lasted but a few minutes; for, immediately after the roll had been called, Enos Lowe, of Des Moines county, was chosen, *viva voce*, President of the Convention. Mr. Thompson was

retained as permanent Secretary, Wm. A. Skinner was named as the Sergeant-at-Arms. At this point "the Rev. Mr. Smith invoked a blessing from the Deity upon the future labors of the Convention." This was the only prayer offered during the entire session. Some time was saved by the immediate adoption of the rules of the Convention of 1844.

In the afternoon it was agreed to have six regular standing Committees. These were: (1) On Boundaries and Bill of Rights; (2) On Executive Department; (3) On Legislative Department, Suffrage, Citizenship, Education, and School Lands; (4) On Judicial Department; (5) On Incorporations, Internal Improvements, and State Debts; and (6) On Schedule.

It is unfortunate that only the barest

fragments have been preserved of what was said in the Convention of 1846. The official journal and a few speeches are all that have come down to us. The debates could not have been very long, however, since the entire session of the Convention did not cover more than fifteen days. The discussion for the most part was confined to those subjects upon which there had been a marked difference of opinion in the earlier Convention or which had received attention in the campaigns of 1845. Indeed, the fact that Boundaries, Incorporations, Banks, Salaries, Suffrage, Executive Veto, Elective Judiciary, and Individual Rights were among the important topics of debate is evidence of a desire on the part of the Convention to formulate a code of fundamental law that would not

meet with the criticisms which were so lavishly heaped upon the Constitution of 1844.

The Convention of 1846 was certainly in earnest in its desire to draft a Constitution which would be approved by the people. Enos Lowe, the President, had at the outset informed the members that they were elected "to form a *new* Constitution." But the attitude of the Convention is nowhere better expressed than in the following action which was taken on the eleventh day of May: "Whereas, In the opinion of this Convention, it is all important that the Constitution formed here at this time, be so framed as to meet with the approbation of a majority of the electors of this Territory, therefore,

"*Resolved*, That a committee of three

be added to the Supervisory Committee, whose duty shall be to enquire into the sectional feelings on the different parts of a Constitution, and to report such alterations as to them appears most likely to obviate the various objections that may operate against the adoption of this Constitution."

By the nineteenth of May the Convention of 1846 had completed its labors. In comparison with the Convention of 1844 its history may be summed up in the one word, "Economy." The Convention of 1846 contained thirty-two members; that of 1844, seventy-two. The former continued in session fifteen days; the latter twenty-six days. The expenditures of the second Convention did not exceed $2,844.07; while the total cost of the first

Convention was $7,850.20. Here then was economy in men, economy in time, and economy in expenditures. The thrifty pioneers were proud of the record.

XVI

THE CONSTITUTION OF 1846

The Constitution of 1846 was modeled upon the Constitution of 1844, although it was by no means a servile copy of that twice rejected instrument. Both codes were drawn up according to the same general plan, and were composed of the same number of articles, dealing substantially with the same subjects. The Constitution of 1846, however, was not so long as the Constitution of 1844 and was throughout more carefully edited.

Article I. on "Preamble and Boundaries" does not contain the quotation from the preamble of the Federal Constitution

which was made a part of the corresponding article in the Constitution of 1844. As to boundary specifications, the only material difference is found in the shifting of the line on the North from the St. Peters to the parallel of forty-three and one half degrees of North latitude. This new boundary was a compromise between the boundaries suggested by Lucas and those proposed by Nicollet.

The "Bill of Rights," which constitutes Article II., contained one additional section, which aimed to disqualify all citizens who should participate in dueling from holding any office under the Constitution and laws of the State.

Article III. on the "Right of Suffrage" reads the same as in the Constitution of 1844, although in the Convention of 1846

a strong effort had been made to extend this political right to resident foreigners who had declared their intention of becoming citizens.

Article IV. on the composition, organization, and powers of the General Assembly contained four items which differed materially from the provisions of the Constitution of 1844. First, it was provided that the sessions of the General Assembly should commence on the first Monday of January instead of on the first Monday of December. Secondly, the Senate was to choose its own presiding officer. Thirdly, all bills for revenue must originate in the House of Representatives. Fourthly, the salaries for ten years were fixed as follows: for Governor $1,000; for Secretary of State $500; for Treasurer $400; for Audi-

tor $600; and for Judges of the Supreme Court and District Courts $1,000.

Article V. on "Executive Department" differs from the corresponding article in the Constitution of 1844 in that the office of Lieutenant Governor is omitted, while the term of the Governor is made four years instead of two.

Article VI., which provides for the Judiciary, limits the term of the Judges of the Supreme Court and District Courts to four years.

Articles VII. and VIII. on "Militia" and "State Debts" respectively are the same as in the earlier Constitution.

Article IX. on "Incorporations" is a radical departure from the provisions of the old Constitution. The General Assembly is empowered to provide general

laws with reference to corporations, but is restrained from creating such institutions by special laws. At the same time the article provides that "no corporate body shall hereafter be created, renewed, or extended, with the privilege of making, issuing, or putting in circulation, any bill, check, ticket, certificate, promissory note, or other paper, or the paper of any bank, to circulate as money. The General Assembly of this State shall prohibit, by law, any person or persons, association, company or corporation, from exercising the privileges of banking, or creating paper to circulate as money."

Article X. on "Education and School Lands" directs the General Assembly to "provide for the election, by the people, of a Superintendent of Public Instruction"

and to "encourage by all suitable means, the promotion of intellectual, scientific, moral and agricultural improvement."

Article XI. on "Amendments of the Constitution" provided but one method of effecting changes in the fundamental law. The General Assembly was empowered to provide at any time for a vote of the people on the question of a Convention to "revise or amend this Constitution." If a majority of the people favored a Convention, then the General Assembly was to provide for the election of delegates.

Article XII. contains three "miscellaneous" items relative to (*a*) the jurisdiction of Justices of the Peace, (*b*) the size of new counties, and (*c*) the location of lands granted to the State.

Article XIII. on "Schedule" provided,

among other things, that the Governor should by proclamation appoint the time for holding the first general election under the Constitution; but such election must be held within three months of the adoption of the Constitution. Likewise, the Governor was empowered to fix the day of the first meeting of the General Assembly of the State, which day, however, must be within four months of the ratification of the Constitution by the people.

It is, moreover, interesting to note that while the Constitution of 1844 prescribed in general outline a system of county and township government, the Constitution of 1846 left the whole matter of local gov ernment to future legislation.

XVII

THE NEW BOUNDARIES

While the people of the Territory of Iowa were preparing for and holding a second Constitutional Convention, and while they were debating the provisions of the new Constitution of 1846, Congress was reconsidering the boundaries of the proposed State. The matter had been called up early in the session by the Iowa Delegate.

Mr. Dodge, having been re-elected, returned to Washington with the determination of carrying out his instructions so far as the boundary question was concerned. And so, on December 19, 1845, he asked leave to introduce "A Bill to

define the boundaries of the State of Iowa, and to repeal so much of the act of the 3rd of March, 1845, as relates to the boundaries of Iowa." The original copy of this bill, which has been preserved in the office of the Clerk of the House of Representatives, bears testimony to Mr. Dodge's fidelity to promises made to the people; for the description of boundaries therein is a clipping from the Preamble of the printed pamphlet edition of the Constitution of 1844. In discussing the question later in the session he referred to his pledges as follows: "I know, Mr. Chairman, what are the wishes and sentiments of the people of Iowa upon this subject. It is but lately, sir, that I have undergone the popular ordeal upon this question; and I tell you, in all candor and sincerity, that

I would not be in this Hall to-day if I had not made them the most solemn assurances that all my energies and whatever influence I possessed would be exerted to procure for them the fifty-seven thousand square miles included within the limits designated in their original constitution. It was in conformity with pledges that I had given them personally, with instructions which I knew I had received from them at the ballot-box, that I introduced, at an early day of the present session, the bill imbodying the boundaries of their choice."

It was not, however, until March 27, 1846, that Mr. Stephen A. Douglas, from the Committee on the Territories to whom Mr. Dodge's bill had been referred, reported an "amendatory bill."

This bill, which was introduced to take the place of the original bill, rejected the boundaries of the Constitution of 1844 and proposed the parallel of forty-three degrees and thirty minutes as the Northern boundary line of the new State. It was committed to the Committee of the Whole House on the State of the Union, wherein it was discussed on the eighth of June and reported back to the House. On the ninth of June the amendatory bill was taken up by the House and passed. It was reported to the Senate without delay, but was not passed by that body until the first day of August. On the fourth day of August the act received the approval of President Polk.

The most important discussion of the bill was in the House of Representatives

on the eighth day of June. An attempt was made to reduce the State on the North. Mr. Rockwell, of Massachusetts, moved to amend by striking out the words "forty-three and thirty minutes" where they occur and inserting in lieu thereof "forty-two degrees." He understood from a memorial which had been presented to the House that the people in the Northern part of the Territory did not wish to be included within the proposed boundaries.

Mr. Douglas said that he was now in favor of the new boundaries as proposed by the Committee on the Territories. He declared that the boundaries of the act of March 3, 1845, "would be the worst that could be agreed upon; the most unnatural; the most inconvenient for the State itself, and leaving the balance of the territory in

the worst shape for the formation of other new States." As to the memorial from Dubuque recommending the parallel of forty-two degrees, Mr. Douglas said that he was aware of the influences which produced it. The people of Dubuque "wished either for such an arrangement as should cause Dubuque to be the largest town in a little State, or else to make it the central town of a large State."

Mr. Rathburn, of New York, was opposed to the lines laid down in the bill. He favored less extensive boundaries because he desired to preserve "the balance of power" in the Union by the creation of small States in the West. He "was against making Empires; he preferred that we should have States in this Union."

Mr. Vinton, of Ohio, said that in the

last session of Congress "no question except that of Texas had excited more interest in the House." He did not think that the people of the Territory should decide the question of boundaries; and he asserted that "if Congress was willing to let the people of Iowa cut and carve for themselves, he did not doubt that they would have their State extend to the mouth of the Columbia."

The strongest speech, perhaps, in the whole debate was that of the Iowa Delegate. Mr. Dodge reviewed the history of the boundary dispute and pointed out that both he and the people of Iowa had pursued a firm and honorable course. He showed that many of the States were as large as or even larger than the proposed State of Iowa. Referring to the boundary

proposed in the act of March 3, 1845, he said: "It will never be accepted by the people of Iowa." But he produced letters to show that the Iowa Convention of 1846 were willing to accept the compromise boundary proposed in the bill under discussion. "Thus, sir, it is now apparent that, if the House will pass the bill reported by the Committee on Territories, it will put an end to this question. The convention of Iowa have met the advances of the Committee on Territories of this House."

Mr. Vinton then "moved an amendment, fixing the 43d parallel as the northern boundary." This was a tempting proposition. But Mr. Dodge stood firmly for the parallel of forty-three degrees *and thirty minutes*, and closed his remarks

with these words: "I admonish the majority of this House that if the amendment of the gentleman from Ohio is to prevail, they might as well pass an act for our perpetual exclusion from the Union. Sir, the people of Iowa will never acquiesce in it."

From the Journal of the Iowa Convention of 1846, it appears that when the Committee on Preamble and Boundaries made their report on the morning of the second day of the Convention they recommended the compromise boundaries which had already been proposed by the Committee on the Territories in the National House of Representatives. But when the report was taken up for consideration several days later an amendment was offered which proposed to substitute the

boundaries as described in the Constitution of 1844. On a test ballot the vote of the Convention stood twenty-two to eight in favor of the amendment. This was on the eighth of May. Six days later a resolution instructing the Committee on Revision to amend the article on boundaries so as to read as follows was adopted by a vote of eighteen to thirteen:

"Beginning in the middle of the main channel of the Mississippi river, at a point due east of the middle of the mouth of the main channel of the Des Moines river; thence up the middle of the main channel of the said Des Moines river, to a point on said river where the northern boundary line of the State of Missouri, as established by the Constitution of that State, adopted June 12th, 1820, crosses the said middle

of the main channel of the said Des Moines river; thence westwardly, along the said northern boundary line of the State of Missouri, as established at the time aforesaid, until an extension of said line intersects the middle of the main channel of the Missouri river; thence, up the middle of the main channel of the said Missouri river, to a point opposite the middle of the main channel of the Big Sioux river, according to Nicollett's map; thence up the main channel of the said Big Sioux river, according to said map, until it is intersected by the parallel of forty-three degrees and thirty minutes north latitude; thence east, along said parallel of forty-three degrees and thirty minutes, until said parallel intersects the middle of the main channel of the Mississippi river; thence down the mid-

dle of the main channel of said Mississippi river to the place of beginning."

These were in substance the compromise boundaries which were first proposed in Congress by the Committee on the Territories on March 27, 1846. Their precise description, however, was the work of the Iowa Convention. Congress promptly adopted this description in the Act of August 4, 1846, by striking out the words of the bill then pending and inserting the language of the Iowa Convention as used in the Preamble to their Constitution.

XVIII

THE ADMISSION OF IOWA INTO THE UNION

When submitted to the people the Constitution of 1846 was vigorously opposed by the Whigs who insisted that it was a party instrument. Their attitude and arguments are nowhere better set forth than in the address of Wm. Penn Clarke to the electors of the counties of Muscatine, Johnson, and Iowa. Mr. Clarke had come to the conclusion, after reading the proposed code of fundamental law, that its ratification would "prove greatly detrimental, if not entirely ruinous to the nearest and dearest interests of the people, by retarding the growth of the proposed State, in popula-

tion, commerce, wealth and prosperity." This conviction led him to oppose the adoption of the Constitution of 1846.

First, he objected to the Constitution "because it entirely prohibits the establishing of banking institutions,"—institutions which are absolutely essential to the economic welfare and industrial development of the State. He contended that this "inhibition of banks is not an inhibition of bank paper as a circulating medium. . . . .The question is narrowed down to the single point, *whether we will have banks of our own, and a currency of our own creation, and under our own control*, or whether we will become dependent on other States for such a circulating medium. . . . .By prohibiting the creation of banks, we but disable ourselves, and *substitute* a foreign cur-

rency for a home currency. The effect of the article on Incorporations will be to make Iowa the *plunder ground* of all banks in the Union."

Secondly, Mr. Clarke opposed the adoption of the Constitution of 1846 because of the provisions in the eighth and ninth articles. He maintained that the article on State Debts was "tantamount to an inhibition" of the construction of Internal Improvements by the State government; while the article on Incorporations aimed to prohibit the people from making such improvements.

Thirdly, he protested against the "experiment" of an elective judicial system, since the election of the judges "is calculated to disrobe our Courts of Justice of their sacred character." Mr. Clarke would

not "deny the right or the competency of the people to elect their judicial officers;" but he pointed out that the effect would be "to place upon the bench *political partisans*," and "to elevate to the judiciary second or third rate men in point of talents and legal acquirements."

Fourthly, the Constitution should be rejected because it contains no provision securing to the people the right to elect their township and county officers. Furthermore, it is "entirely silent with reference to county and township organization."

Fifthly, Mr. Clarke argued against the adoption of the Constitution because "not a single letter can be stricken from it without calling a Convention." He declared that the Democrats, after incorporating into the Constitution "partizan dogmas,"

so formulated the article on Amendments as to make their creed permanent.

In the closing paragraphs of this remarkable arraignment of the proposed Constitution, Mr. Clarke referred to local interests in connection with the location of the State Capital. Iowa City, he said, had been founded "with a view to its being the permanent Capital of the State." But the new boundaries, proposed by the Committee on the Territories, would, if adopted, threaten the permanency of the Iowa City location. Indeed, Mr. Clarke went so far as to intimate that the relocation of the Capital was a part of Mr. Dodge's program in connection with the solution of the boundary problem. Curtailing the State on the North and extending it at the same time to the Missouri

on the West meant the ultimate shifting of the Capital to the Raccoon Forks. Mr. Clarke concluded the prophecy by saying that "to quiet the center, we shall probably be promised a State University, or something of that character, and then be cheated in the end."

Such were the leading objections to the ratification of the Constitution of 1846 as urged by the Whigs in the press and on the stump. They were supported by the more conservative Democrats who protested against the article on Incorporations and the article on Amendments. A large majority of the people, however, were impatient for the establishment of State organization. For the time they were even willing to overlook the defects of the proposed Constitution. Many voted for the instru-

ment with the hope of remedying its imperfections after admission into the Union had once been effected.

The Constitution of 1846 narrowly escaped defeat. At the polls on August 3, 1846, its supporters, according to the Governor's proclamation, were able to command a majority of only four hundred and fifty-six out of a total of eighteen thousand five hundred and twenty-eight votes.

On September 9, 1846, Governor Clarke, as directed by the Territorial statute of January 17, 1846, issued a formal proclamation declaring the ratification and adoption of the Constitution. In the same proclamation, and in accordance with the provisions of the new Constitution, the Governor designated "Monday, The 26th Day of October Next" as the time for

holding the first general election for State officers. The returns of this election showed that the Democrats had succeeded in electing Ansel Briggs, their candidate for Governor, by a majority of one hundred and sixty-one votes. The same party also captured a majority of the seats in the first General Assembly.

Following the directions of the Schedule in the new Constitution, Governor Clarke issued a proclamation on November fifth in which he named Monday, November 30, 1846, as the day for the first meeting of the General Assembly. On December second the Territorial Governor transmitted his last message to the Legislature.

It was on Thursday morning, December 3, 1846, that the Senators and Representatives assembled together in the Hall of

the House of Representatives in the Old Stone Capitol to witness the inauguration of the new Governor. Here in the presence of the General Assembly Judge Charles Mason, Chief Justice of the Supreme Court of the Territory, administered the oath of office to the first Governor of the State of Iowa.

Twelve days after the inauguration of the State Governor at Iowa City, Mr. Dodge presented to the House of Representatives at Washington a copy of the Constitution of Iowa. The document was at once referred to the Committee on the Territories, from which a bill for the admission of Iowa into the Union was reported through Mr. Stephen A. Douglas on December seventeenth. It was made a special order of the day for Monday, De-

cember twenty-first, when it was debated and passed. Reported to the Senate on the twenty-second, it was there referred to the Committee on the Judiciary. This Committee reported the bill back to the Senate without amendment. After some consideration it passed the Senate on December twenty-fourth. Four days later it received the approval of President Polk. The existence of Iowa as one of the Commonwealths of the United States of America dates, therefore, from the TWENTY-EIGHTH DAY OF DECEMBER, ONE THOUSAND EIGHT HUNDRED AND FORTY-SIX.

The act of admission declares that Iowa is "admitted into the Union on an equal footing with the original States in all respects whatsoever," and provides that all the provisions of "An Act supplemental to

the Act for the Admission of the States of Iowa and Florida into the Union" approved March 3, 1845, shall continue in full force "as applicable to the State of Iowa." The conditions contained in the provisions of this act, which had been substituted by Congress in lieu of the provisions of the Ordinance submitted by the Convention of 1844, were finally accepted by the General Assembly of the State in an act approved January 17, 1849.

XIX

THE CONVENTION OF 1857

Throughout Iowa there was a very general feeling of satisfaction with the new political status which came with the establishment of State government and admission into the Union. Having outlived the conditions of Territorial government the pioneers of Iowa now entered into the new political life without regret. They rejoiced over the fact that they were recognized as a part of a great Nation. They appreciated the significance of the change. Nor were the pioneers of Iowa strangers to National political life. As settlers on the Public Domain they were in a very special

sense children of the Nation. They had always cherished the inheritances of the "Fathers." But now the days of dependence were over. Henceforth this people of the frontier would strengthen the whole country with their own political ideas and ideals. They would, indeed, help to vitalize the Politics of the Nation with the provincial spirit of Western Democracy.

On the other hand, the people of Iowa did not accept their new State Constitution without reservations. Wm. Penn Clarke's address had been widely read and his arguments were accepted not alone by the Whigs. In fact the Constitution of 1846 had not been adopted altogether on its merits. The people were anxious to get into the Union, and they voted for the Constitution as the shortest road to admis-

sion. They meant to correct its errors afterwards.

In 1848 the editor of the *Iowa City Standard* asserted that the Constitution of 1846 had been "accepted purely from motives of expediency, and with a tacit understanding that it was to receive some slight amendments as soon as they could constitutionally and legally be made. And but for this it would have been rejected by a very handsome majority. No well informed citizen can deny this."

And so the Constitution of 1846 had scarcely been ratified at the polls before an agitation looking toward its amendment or revision was begun. As early as August 19, 1846, the *Iowa City Standard* declared that "three fourths of the people of Iowa have determined that, cost what it may,

the Ninth Article shall not remain unaltered in the Constitution.''

During the first session of the General Assembly of the State a bill providing for an expression of the opinion of the people of Iowa upon the subject of amendment passed the House of Representatives, but was indefinitely postponed in the Senate by a vote of ten to eight. This was in February, 1847. In 1848 the question of Constitutional amendment was made an issue in the political campaign. The Whigs advocated amendment or revision; while the Democrats as a rule stood for the Constitution as ratified in 1846.

A bill providing for an expression of opinion by the people was again introduced in the House of Representatives during the second session of the General As-

sembly, but was indefinitely postponed after the second reading. A similar bill was rejected by the House during the third session. During the fourth regular session petitions favorable to amendment were received from the people.

In the meantime Stephen Hempstead was elected to the office of Governor. He had been opposed to the agitation for Constitutional revision, and in his first Message of December 7, 1852, he said: "I cannot avoid a feeling of deep concern at the opinion expressed by some portion of our fellow citizens in favor of amending the Constitution of our State in such a manner as to authorize the establishment of Banks —of special acts of incorporation for pecuniary profit, and of contracting State debts without limitations of the General

Assembly." In the same document he urged "upon the General Assembly the propriety of passing a law to prohibit the circulation of all bank notes of a less denomination than ten dollars." When he retired from office in December, 1854, he still declared that he saw no "imperative reason why our Constitution should be amended." But his successor, Governor Grimes, favored submitting the question of revision and amendment to the people.

The necessity for a Convention to revise the Constitution of 1846 had become imperative. Iowa was flooded with a depreciated paper currency from other States. Gold and silver money was scarce. The few pieces which found their way into the State were hoarded either to pay taxes or to pay for government land.

Finally, "An Act providing for the revision or amendment of the Constitution of this State" was passed by the fifth General Assembly and approved by Governor Grimes, January 24, 1855. In accordance with its provisions a poll was opened at the general election in August, 1856, "for the purpose of taking a vote of the people for or against a convention to revise or amend the Constitution." On the tenth day of September the Governor declared in his official proclamation that a majority of eighteen thousand six hundred and twenty-eight votes had been cast in favor of a Convention.

In November, 1856, thirty-six delegates were elected to the Convention which met in the Supreme Court room of the Old Stone Capitol at Iowa City on January 19,

1857. Mr. Gray, of Linn County, called the Convention to order and moved that John A. Parvin, of Muscatine, be chosen President *pro tem.* On the following day Francis Springer was elected President of the Convention. The other permanent officers were as follows: Thomas J. Saunders, Secretary; Ellsworth N. Bates, Assistant Secretary; S. C. Trowbridge, Sergeant-at-Arms; Francis Thompson, Door Keeper; James O. Hawkins, Messenger; and W. Blair Lord, Reporter.

Of the thirty-six delegates, six were from the New England States, eleven from the Middle States, ten from the South, and nine from the Middle West. As to occupation there were fourteen lawyers, twelve farmers, two merchants, two dealers in real estate, two bankers, one book-seller, one

mail contractor, one druggist, and one pork-packer. The youngest member was twenty-six, the oldest fifty-six; while the average age of all the members was forty years. Twenty-one of the thirty-six members were Republicans; the other fifteen were Democrats.

Early in the session of the Convention of 1857 there appeared to be considerable dissatisfaction with the accommodations afforded at Iowa City. The General Assembly had not yet adjourned, and so the Convention was compelled to meet for a few days in the Supreme Court room. Some of the members complained of the hotel service, and declared that they had not been welcomed with proper courtesy and hospitality by the people of Iowa City. At the same time the Convention received

alluring invitations from Davenport and Dubuque. A committee of five was appointed to whom these invitations were referred. The report of this committee provoked a lively debate which Wm. Penn Clarke desired to have suppressed in the published reports. The result of the discussion was that the Convention concluded to remain in Iowa City.

On the second day the members took an oath to support the Constitution of the United States. Some desired to include in this oath the Constitution of the State of Iowa; but the majority did not think it proper to swear allegiance to a Constitution which the Convention was called upon to amend, revise, or perhaps reject altogether.

The act of January 24, 1855, calling

for the Convention, provided for "the revision or amendment of the Constitution." Many would have been satisfied with a few amendments. The Convention, however, proceeded to draft a completely revised code of fundamental law. The two large volumes of printed reports show that the principles of Constitutional Law were discussed from Preamble to Schedule.

The most important question before the Convention of 1857 was that of Corporations in general and of banking Corporations in particular. The Republican majority was pledged to make provisions for a banking system of some sort. But the popular mind had not decided whether there should be a State bank with branches, or a free banking system under legislative restrictions, or both. Difficult and intri-

cate as the problem was, the Iowa Convention handled it, nevertheless, with energy and rare ability. The debates show that the laws and experience of the other States were carefully studied. Nor were local conditions and local experience forgotten. The discussions were long, earnest, and often heated; but at no time did the Iowa Convention lose its political sanity. That political poise which, in the long run, has always characterized Iowa Politics was maintained throughout the session.

As finally agreed upon in the Convention, the provisions of the new Constitution relative to banking Corporations were in substance as follows: (1) The power to make laws relative to Corporations was conceded to the General Assembly. (2) But acts of the General Assembly authorizing or

creating Corporations with banking powers must be referred to the people for their approval at a general or special election. (3) The General Assembly was empowered to establish "a State Bank with branches." But such a bank, if established, "shall be founded on an actual specie basis, and the branches shall be mutually responsible for each others' liabilities upon all notes, bills, and other issues intended for circulation as money." (4) The General Assembly may provide by a general law for a free banking system under certain restrictions. (*a*) Provision shall be made "for the registry and countersigning, by an officer of State, of all bills, or paper credit designed to circulate as money," and the law shall "require security to the full amount thereof, to be deposited with the

State Treasurer, in United States stocks, or in interest-paying stocks of States in good credit and standing." (*b*) Records shall be kept of the names of stockholders and of the stock held by each. (*c*) Every stockholder shall be individually liable for an amount equal to twice the amount of his stock. (*d*) In cases of insolvency bill-holders shall have a preference over other creditors. (*e*) The suspension of specie payments shall never be permitted or sanctioned. (5) By a vote of two thirds of each branch of the General Assembly all laws for the organization or creation of Corporations could be amended or repealed. (6) The State shall not become a stockholder in any Corporation.

Next in importance to the question of Corporations was the Negro problem.

Shall the public schools of the State be open to persons of color? Shall the Constitution guarantee to all persons, irrespective of color, the right to acquire, hold, and transmit property? Shall the testimony of Negroes be accepted in the courts? Was the militia to be composed exclusively of "able-bodied white male citizens?" Shall the right of suffrage be extended to Negroes? It was in respect to these vital questions of the hour that the Republican majority in the Convention was compelled to declare and defend its attitude.

The fact that the Republican party of Iowa was thus being put on trial for the first time makes the debates of the Convention of 1857 memorable in the political annals of the State. But these Iowa Republicans were at the same time defining

and defending the attitude of their party on National issues; and so the debates of the Iowa Convention are a source-book also in the broader history of America.

No one can read the pages of these debates without feeling that Iowa was making a decided contribution to National Politics. Nearly four years before the "Divided House Speech" was delivered at Springfield, Illinois, Governor Grimes had said in his inaugural address: "It becomes the State of Iowa — the only free child of the Missouri Compromise — to let the world know that she values the blessings that Compromise has secured her, and that she will never consent to become a party to the nationalization of slavery." And full two years before Lincoln defined the attitude of his party in the Lincoln-Douglas

debates, it had gone forth from the Iowa Convention, (1) that the Republican party was not a sectional party; (2) that Abolition was not a part of the Republican creed; and (3) that, while they would arrest the further extension of slavery, Republicans had no desire to interfere with the institution in places where it already existed.

The question as to whether the Negro should be allowed to vote in Iowa was referred to the people to be decided by them when the Constitution itself was submitted for ratification.

Another question of interest which provoked considerable discussion in the Convention was the location of the State University and the re-location of the Capital. This problem had already been solved by

the General Assembly. But to prevent further agitation by making the compromise permanent the following section was added to the new Constitution: "The Seat of Government is hereby permanently established, as now fixed by law, at the city of Des Moines, in the county of Polk, and the State University at Iowa City, in the county of Johnson."

After a session of thirty-nine days the third Constitutional Convention in the history of Iowa adjourned *sine die* on Thursday, March 5, 1857.

XX

THE CONSTITUTION OF 1857

The code of fundamental law which was drafted by the Convention of 1857 was modeled upon the Constitution of 1846, as this instrument had previously been patterned after the Constitution of 1844. Perhaps it would be better to say that the Constitution of 1857 was simply a revision of the Constitution of 1846. The later document, however, is fuller and altogether more complete and more perfect than its precursors.

The changes which had been effected in the fundamental law were summed up by the President of the Convention in his

closing remarks as follows: "We have added some new and important guards for the security of popular rights, and for the promotion of the best interests of the social compact. Restrictions existed in the old constitution, which it is believed have operated to check and retard the energies and prosperity of the State. These we have removed. We have stricken the fetters from the limbs of the infant giant, and given free scope to resources, capable as we believe, of working out the highest results."

Some important additions were made to the Bill of Rights. Section four declares that the testimony of any person (including Negroes), not disqualified on account of interest, may be taken and used in any judicial proceeding. Section six provides that the "General Assembly shall not grant

to any citizen, or class of citizens, privileges or immunities, which, upon the same terms, shall not equally belong to all citizens." To section nine is added the classical declaration that "no person shall be deprived of life, liberty, or property, without due process of law." Section twenty-four, which is altogether new, provides that "no lease or grant of agricultural lands, reserving any rent, or service of any kind, shall be valid for a longer period than twenty years."

In Article III. the date of the regular biennial session of the General Assembly is changed from the first Monday in December to "the second Monday in January next ensuing the election of its members." Section fifteen provides that bills (including those for revenue) may originate

in either House of the General Assembly. But, according to Section seventeen, "no bill shall be passed unless by the assent of a majority of all the members elected to each branch of the General Assembly." Furthermore, the cases in which the General Assembly is prohibited from passing local or special laws are specifically ennumerated in section thirty.

The most significant change or addition in the article on the "Executive Department" is the provision for a Lieutenant Governor.

The article on the Judicial Department provides for the election of the Judges of the Supreme Court by the people instead of by the General Assembly. By the same article provision is made for "the election of an Attorney General by the people."

The article on "State Debts" is more explicit and more guarded, but permits the State to contract debts which, however, "shall never exceed the sum of two hundred and fifty thousand dollars."

Article VIII. removes the illiberal restrictions which had been placed by the Constitution upon Corporations—especially banking Corporations. And Article X. makes the process of amending the fundamental law altogether more flexible.

The Board of Education, provided for in Article IX., was an innovation. As a system of educational control it proved unsatisfactory and was soon abolished by the General Assembly.

The new Constitution was submitted to the people for ratification at the regular annual election which was held on Mon-

day, August 3, 1857. Naturally enough the Democrats, who had been in the minority in the Convention of 1857, opposed the adoption of this "Republican code." The Republican party, however, now had the confidence of the people and were able to secure its ratification by a majority of sixteen hundred and thirty votes. At the same time the special amendment which proposed to extend the right of suffrage to Negroes failed of adoption.

On September 3, 1857, Governor James W. Grimes declared the "New Constitution" to be "the supreme law of the State of Iowa."

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